

The Alicia Patterson Fund

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THE CHAU TRIAL II: DENOUEMENT

By Elizabeth Pond

The III Corps Tactical Zone Mobile Military Field Court is something of a misnomer. Located as it is in the middle of the Saigon navy yard just off the docks of the Saigon River, it is not exactly in the III Corps Tactical Zone. Nor is it mobile. Nor is it in the field.

It is, however, decidedly military.

The field courts -- there is one for each of the four corps areas in South Vietnam -- were instituted in 1962 in the waning months of President Ngo Dinh Diem. They do try military cases, such as desertion, but their most famous role, since the beginning, has been political. Diem set them up deliberately, as the euphemism has it, to "consolidate" his regime. Any case involving national security, even when the defendant is a civilian, is handled by these courts. And the rubric of national security can encompass anything.

The biggest of the Diemist political trials in the III CTZ Mobile Military Field Court involved some 40 would-be opposition politicians, including the most popular National Assemblyman of the time (now a member of the Thieu government). In more recent years the III CTZ Mobile Military Field Court has been the locale of the trial of Buddhist leader Thich Thien Minh, of dissident students, and of the spy rings whose discovery has rocked Saigon.

Miss Elizabeth Pond is an Alicia Patterson Fund award winner on leave from the Christian Science Monitor. This article may be published with credit to Miss Pond, the Christian Science Monitor, and the Alicia Patterson Fund.

The courtroom is a high one-storey building of tropical military construction, with interior steel girders, a metal roof, windows and doors the length of the left and right walls, and ceiling fans that rotate perfunctorily. Fluorescent lights near the ceiling augment the daylight streaming in from the unshuttered left windows. From time to time the air is stirred by a breeze generated less by the fans than by the early March kite-flying weather.

At 8 a.m. on March 2, the scheduled opening of the trial of Deputy Trần Ngọc Chau, all activity centers on the outside courtyard. Spectators mill about, waiting for something to happen. Journalists slouch against the parked jeeps and cars to chat. Photographers compete for the best positions at the end of the corridor between buildings that is to be Chau's entry route. A few old hands take coffee in the small snack bar decorated with the terse sign, "Please do not urinate here. Thank you." There are two Senators and five Deputies out of a possible 197 legislators present to witness the trial of one of their own. There is a smattering of young diplomats -- American, Australian, and British. There is a captain, a young lawyer, from the US Command's Judge Advocate-General's office who is personally intrigued by the trial but will shortly be instructed by his superiors not to attend. There is one Buddhist monk in brown robes.

About 50 MPs with night sticks, pistols, and rifles, along with soldiers with shoulder patches of the balance scale of justice, stand by to control an assemblage of double or possibly triple their number. Agents for diverse intelligence organizations make little effort to disguise their interest in what others are saying and writing.

A tall yard arm in the center of the open area verifies that this is indeed the navy yard.

Currents quicken and abate in the crowd, now bunching, now relaxing the telephotoed cameramen. At 8:50 the current is finally justified. The III CTZ Mobile Military Field Court convenes.

The principals take their places. The spectators stand packed together on the windowsills and on the seats of the front audience benches. The five officers of the tribunal enter, salute, remove their hats, and seat themselves at the front of the room under the flag of the Republic of Vietnam. The presiding judge, Lt. Col. Triệu Khắc Huynh, removes his dark glasses. His face could have been chosen for his role by Central Casting.

To the left, the prosecutor, a gentle-eyed, slightly plump major, sits at a desk that is a little higher than the tribunal's collective desk. Facing him on the right at a little lower desk is the clerk of the court. Between them, in the central position facing the presiding judge, is the podium at which lawyers and witnesses speak. The first two rows of benches, with rounded backs, are occupied by the trial lawyers and student lawyers in their black robes. There is no bar between the audience and the participant areas, so the lawyers can circulate freely into the spectators' section if they choose to do so.

Chau's two lawyers are Vu Van Huyen and Tran Van Tuyen. Huyen too looks his part, with his moustache, and his thick gray hair brushed back. He has been defending dissidents in this court since its inception -- and has been arguing the illegality of this court off and on since its inception. Tuyen, a member of Huyen's law firm, is better known as a politician in his own right. He is a leading member of the VNQDD, one of the original nationalist parties in Vietnam in the 1930s, now a member of President Nguyen Van Thieu's five-party political bloc. Tuyen was jailed under the French in the early 1940s, then jailed again for two years under Diem as a member of the Caravelle group of former ministers that proposed unwelcome reforms to Diem.

The presiding judge orders that the criminal Tran Ngoc Chau -- this is the customary way to refer to an accused -- be brought into the court. Chau is escorted in by 8 MPs. His chunky build and sloped shoulders are accentuated by his clothes -- the collarless black pajamas of the RD cadres. His haircut is trim, as it was before his arrest. His neck is bandaged in the front and in the back, where he was knocked on the stairs as the police carried him out of the National Assembly building at the time of his arrest. He is wearing sandals.

The trial begins.

Lawyer Vu Van Huyen: On February 24, 1970 I asked for five witnesses connected with Deputy Tran Ngoc Chau to be present at the trial: John Vann [American civilian chief in the delta, a long-time resident in Vietnam and a long-time friend of Chau's], William Colby [US Ambassador for pacification], Eugene Locke [former US Deputy Ambassador to Vietnam], General Frederick Weyand [now the chief military adviser on the US delegation to the Paris talks; at the time of the Tet 1968 offensive the commander of all US troops in III Corps surrounding Saigon], and Ambassador Ellsworth Bunker.

Judge Trieu Khac Huynh: This court has nothing to do with foreigners. We are here to try Vietnamese.

Prosecutor Truong Thanh Kieu: Deputy Chau's case concerns national security and not informing Vietnamese government authorities, so his relations with Americans have no value.

A heated exchange ensues, in which Huyen raises Constitutional rights which he says have been violated, and the prosecutor replies that this is a special court with special procedures not specified in the Constitution, that this court has nothing to do with the Constitution.⁷¹

Huyen: I know this court is above the Supreme Court...

Judge: Please talk seriously. I ask the clerk to report the attitude of Chau's lawyer to the President Thieu.⁷²

Mrs. Nguyen Phuoc Dai a lawyer and Senator who recently joined the opposition bloc of Senator Tran Van Don⁷³:

I ask to be allowed to defend Deputy Chau.

Prosecutor: Article 44 of the regulations of the Bar Association say that when a lawyer becomes a Senator or Deputy he cannot defend those who turn against the government.⁷⁴ If a lawyer goes ahead and does it, he is free to do so, but he has to face disciplinary action by the association.

Dai: I have been practicing law for 20 years without breaching the law. We are convinced that Deputy Chau is innocent and is not a Communist who is working against the country, but a nationalist. For the sake of the common people I have to defend him; he is my colleague, a representative of the people. Because of this I would be glad to face the disciplinary committee of the Bar Association for my action. But I did consult the chairman of the association already on this, and he thinks I would not be breaching the regulations.

1. The introductory part of the trial as recorded here is sketchy, as the turmoil and the wall of spectators standing on the first few rows of benches sometimes muffled participants' voices. The exchanges of the trial as given here are based primarily on a running translation which was taken down mostly in longhand, sometimes in shorthand. These notes have been filled in in a few places with taped segments or from the notes of other journalists who were close to the front of the courtroom. No doubt some mistakes have crept in, but every effort has been made to get as accurate an account as possible. The result, I believe, is a fair representation of the trial.

2. Bar Association regulations prohibit lawyers who have become Senators or Deputies from arguing before the courts. The purpose of this restriction is to prevent political pressures from being applied on the courts by these people.

Prosecutor: No, the Bar Association is an organization, an individual association which is one of many associations in the nation. If the Bar Association does not follow the organization's discipline, how can the people follow the nation's discipline?

Judge: Please ask the Bar Association chairman to come here to decide whether or not to let you defend Tran Ngoc Chau.

[20-minute recess to call in the Bar Association chairman. He appears and says in essence that Mrs. Dai may go ahead and the Bar Association will review the case later. Mrs. Dai is accepted by the court.]

Dai: This is an important case, so I would like to have time to study the documents.

Prosecutor: That is not necessary. On February 28 the delegation of the Senate Judicial Committee of which Mrs. Dai is a member asked the military court to see the Tran Ngoc Chau documents. She must have known about the charges at that time; everyone has known about the charges since February 5, when they were initiated. On February 28 at 5 p.m. she asked to be a defender of Chau. We accepted this, but we cannot postpone the trial, because that would create more tension. People are demanding to know whether Chau is guilty or not. She can follow what has been going on; she does not need to study in order to defend the accused.

Dai: This case is very important, as the prosecutor said, so we would like to postpone the trial to have more time to study the charges.

Huyen: We ask for a postponement of at least one day.

Prosecutor: We should proceed. The whole charge can be summarized in only 16 pages. The court should refuse to give Mrs. Dai more time. On February 28 I as well as the clerk went to copy the complete charges. We finished at 1600. Everyone, even school pupils, has known about this case from the beginning.

Dai: You cannot compare a lawyer's knowledge of a case with the knowledge of children! I tried to see the dossier yesterday, but was told it was before the tribunal. I ask for more time.

Prosecutor: This court is a special court with special procedures.

Huyen: It is a special court, but it is still under the control of the Supreme Court. If you say you refuse every legal procedure, then this court considers itself above the Supreme Court.

Judge: No, we are sitting under law.

Huyen: I hope so.

Judge: It's not a case of hope, but truth.

[recesses the court until the afternoon to give Mrs. Dai a few hours to study the case]

The afternoon session, scheduled for 2:15, gets under way at 4:00.

Tran Ngoc Chau: I ask to say two things. First, as a high-ranking officer who has been awarded the National Order, I protest against government authorities taking away my medal, after I had been beaten so my head was not clear. Even though I lost my order of the fourth rank, I still have the order of the fifth rank, which I received from President Diem.¹

Second, on what basis did the government bring me to this court for trial?

Prosecutor: First, Chau hid in the National Assembly, so with the authorization of the President of the Lower House he could be arrested. I myself went there and talked to the President.

Second, he was caught in flagrante delicto in liaison with the enemy, so he can be tried by this court.

1. The fourth-rank medal, which Chau was wearing at the time police entered the National Assembly office to arrest him, was knocked or taken off him when Chau was arrested. Before his arrest Chau had said that police were not allowed to use force against anyone wearing the medal of the National Order. The day after Chau's arrest President Thieu, who had awarded this medal to Chau, signed a decree rescinding it.

Chau: Standing very straight, his hands gripped behind his back, taking deep breaths]

I raise the question of the honor of a high-ranking officer of the armed forces of the Republic of Vietnam and a holder of the National Order. Now I ask, if I was arrested in flagrante delicto, why did Mr. Thieu send a letter to the Lower House asking the Lower House to give its permission to prosecute me? If it was decided that I was in flagrante delicto and my appeal for a new trial was accepted, then the sentence of the court of February 25, 1970 and the order to arrest me were canceled. Why was I already treated as a criminal when I had immunity under the Constitution?¹

Prosecutor: Now, you cannot plead the Constitution, because the court acted to prosecute you as you refused to come to the court after three summons and tried to hide instead. So we cannot treat you according to the Constitution.

Judge: Now we ask you, and you answer. Why didn't you come to the court when you were summoned?

1. This of course was the central legal issue in Chau's arrest and trial: whether or not the legal procedures required to remove his parliamentary immunity under the 1967 Constitution were in fact followed. As indicated in EP-6, the government first secured 102 signatures, or an absolute three-fourths majority of the Lower House, by a petition process out of session, saying this constituted the "approval" required to lift immunity under Article 37, paragraph 2, of the Constitution. At the last minute the government switched to a case of flagrante delicto or, roughly, "caught in the act." In cases of flagrante delicto the legal initiative is reversed. Though the House may by requesting it cause prosecution to cease, no prior approval of the House is required to take such cases to trial. The respective provisions read:

Art. 37, par. 2. During their entire term of office, Representatives and Senators cannot be prosecuted, pursued, arrested or judged without the approval of three fourths of the total number of Representatives or Senators, except in cases of flagrante delicto.

Art. 37, par. 3. In cases of flagrante delicto, prosecution or detention of Representatives and Senators shall cease if the House concerned so requests.

Huyen: My client did not attempt to hide himself when he was summoned by the prosecutor. The accused could not appear because the lawyer of the accused did not see the resolution of the Lower House under Article 37, paragraph 2, of the Constitution authorizing the executive to prosecute Deputy Chau. So until the resolution of the house was produced, there was no reason for Chau to appear as ordered by the prosecutor.

Prosecutor: On February 25 there was a trial, but your lawyer did not come. Under law 11/62 setting up field courts, the court has the power to prosecute anyone committing acts against the nation and security in flagrante delicto. So the accused Chau could be arrested as a criminal and not as a Deputy on February 26.

Huyen: ?

Dai: Pacing back and forth, addressing herself to the prosecutor

Even today Chau is still a Deputy until a verdict is reached. Today when Chau appeared in court the February 25 sentence from the trial held in absentia was considered as nullified. Then Chau must be considered as a Deputy, not yet as a simple citizen who has been charged.

Huyen: On February 25 the prosecutor refused my right to be empowered as lawyer for the accused. A lawyer has the right to defend the accused as long as the sentence has not yet been passed.

In a letter dated November 19 the President Thieu asked the Lower House to prosecute Deputy Chau. The Lower House set up a committee to investigate. When the committee reported, 70 members of the House agreed with the charges. But there was no resolution to prosecute Deputy Chau.

Later on, however, a petition to prosecute was circulated. On February 3 there was no debate either. But suddenly the petition was worded as if there had been two plenary sessions before a resolution was passed with a three-fourths majority authorizing the executive to prosecute Deputies Ho and Chau.¹

1. The petition was titled as a resolution when it was sent to Thieu. During the trial the prosecution consistently refers to a resolution, while the defense refers to a petition.

(Huyen con.)

[Mrs. Dai continues pacing back and forth while Huyen speaks.]

Then the President ordered the Minister of Defense to prosecute Deputies Chau and Ho before the military court on charges that Chau had been in liaison from January, 1965 to early 1969 with people who were carrying out activities damaging to national defense. Then on February 25 you, this court, sentenced Deputy Chau, but he did sign the appeal for a new trial. You then ordered Deputy Chau's arrest on February 26, 1970.

The arrest and detention of Deputy Chau were unconstitutional, because they were based on the petition of the Lower House. But the petition never agreed that Deputy Chau be arrested. However, on February 19 the Minister of Defense ordered the arrest of Chau. This was unconstitutional.

Now let's talk about using flagrante delicto in order to execute the court order to carry out the sentence of February 25 and arrest Chau. Deputy Chau appeared in court today. But Deputy Chau cannot be arrested before he is sentenced, and the sentence of February 25 was nullified when Deputy Chau signed the appeal for a new trial.

If the case was one of flagrante delicto, then the Lower House should have been informed so that the Lower House could halt the prosecution if it so wished. If it was flagrante delicto, then the arrest of Chau without informing the Lower House and leaving it enough time for debate before the arrest was illegal. Now I ask the judge to release Deputy Chau by removing the criminal number patch from the front of his chest.

[This is not done. Chau sits on the front bench, smiling at the spectators as he does so.]

Prosecutor: So far we have used the term "Deputy" Tran Ngoc Chau. We have not addressed him by his surname only. On February 27 Lawyer Dai, a member of the Senate delegation which came to see him, talked to Deputy Chau. He was in a suit. Deputy Chau was in good condition, not badly beaten as you said.

The letter of the President of November 19 was sent to ask the idea of the House. It was the House

(Prosecutor con.)

which decided to form the committee to investigate the case and decided to authorize the prosecution of Deputy Chau. This court is empowered to prosecute Deputy Chau as authorized on the basis of flagrante delicto. We cannot argue the details of flagrante delicto until the time for factual evidence comes up in the trial.

As the House knew that the executive had decided to prosecute Deputy Chau, why didn't the house stop the prosecution when it still had that power before the court held this session?

Huyen: No, the House did not think that Deputy Chau would be tried on the basis of flagrante delicto. The petition of the 102 Deputies did not say anything about flagrante delicto.

Dai: She has been fanning herself. Her coiffed hair does not go limp, despite the heat. As she speaks, she now resumes pacing.

When we went to see Deputy Chau his suit was bloody; his face was pale.

The President's letter dealing with the case said, "In order to protect the prestige of your concerned House, I request that the President [of the House] apply the [expulsion] procedures of Article 38₁ of the Constitution to Deputy Tran Ngoc Chau.¹ After that, the concerned will be prosecuted as a common citizen. If your House thinks that you need a judicial sentence to confirm the crime clearly before that, your House is requested to apply Article 37 of the Constitution permitting prosecution of Deputy Chau for his crime." There is nothing here about flagrante delicto. So the arrest and prosecution of Deputy Chau was unconstitutional.

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1. The key paragraphs of Article 38 read:
 2. Removal from office must be proposed by two-thirds of the total number of Representatives or Senators.
 3. The resolution to remove a member from office must be approved by three-quarters of the total number of Representatives or Senators.

Huyen:¹

The order of the Minister of Defense of February 19 to arrest and prosecute Deputy Chau as a simple citizen thus had neither the authorization of the House in accordance with Article 37/2, nor was it in accord with flagrante delicto procedures. So the action of the Minister of Defense was illegal.

To conclude, the President could cancel his letter and the petition of the House, and then you could prosecute Deputy Chau on a case of flagrante delicto. But the letter of the President still stands, asking the Lower House to expel Deputy Chau or to authorize the executive to prosecute him. And the Lower House did not authorize either. The letter of the President of the Lower House to the President of the executive is unconstitutional, because Article 37/2 requires debate in plenary session with a vote to be carried out, and a resolution signed by a three-fourths majority, recorded by the secretary of the House and the President of the session in accordance with

1. With an impromptu translation of the sort given here the main points sometimes get blurred. A summary of Huyen's case is therefore in order here. Huyen is arguing that there are three areas of unconstitutionality in the trial: the arrest and detention of Chau, the trial itself, and the jurisdiction of the military court.

First, Huyen says, there is no legal basis for arrest. The Lower House petition of 102 Deputies, even if it is considered valid, authorizes prosecution but not arrest. Arrest would be justified only after conviction. But the sentence of the first, in absentia, trial was automatically nullified as soon as Chau signed the plea for a new trial at which he would appear. At different times the government has said Chau's arrest was based on the arrest order of the Minister of Defense of February 19 (in response to the petition) or on the sentence given in absentia; either way, Huyen argues, the arrest was illegal.

The prosecution is likewise illegal, he continues. The petition process does not constitute the legal "approval" demanded by Article 37/2 of the Constitution, as indicated in the recorded debate about that provision held in the Constituent Assembly. If, however, prosecution is based on capture under circumstances of flagrante delicto, this is equally illegal; it cannot be reasonably maintained that Chau, because he himself later acknowledged previous meetings with his brother, had been caught in the act of those meetings with his brother. (con't.)

(Huyen con.)

Article 48 of the Constitution¹ and Article 47 of internal regulations of the House.

Thus the petition signed by the 102 Deputies cannot be interpreted as correct according to Article 37/2, which would require a plenary session, debate, and a vote to get the three-fourths majority.

If we prosecute Deputy Chau unjustly, then the government could save money. Deputies would not have to come to the House to debate, and any bill proposed by the President would not have to be debated either. We would just need to go to the houses of the Deputies to collect signatures.

The spectators who have been standing on the front benches keep their feet on the bench seats but gradually sit down on the backs of the benches.]

The spirit of the Constituent Assembly when it worked out Article 37/2, according to the official Journal of the Republic of Vietnam no. 19, pages 1240-42, was that there should be a plenary session of the House concerned, debate, and a favorable vote by a three-fourths majority. A simple petition with the signatures of three-fourths of the members is not in accord with the spirit of the Constituent Assembly.

Furthermore, the petition of 102 asking for the executive to prosecute Deputy Chau was general; it did not specify on what charges Deputy Chau was to be tried. That means it gave full power to the executive to prosecute Deputy Chau on any case the executive might want to. That too is against the spirit of Article 37/2 and the Constituent Assembly.

The third point of unconstitutionality, Huyen argues, is the whole jurisdiction of the military court in such civilian cases. In its truncated procedures and in allowing no appeal of its sentences to a higher court or to the Supreme Court, it violates Constitutional guarantees of defense and legislation subjecting every court to the Supreme Court. In having judges appointed by the executive from a military list drawn up with no judicial requirements, it violates the Constitutional separation of powers.

1. Article 48, par. 1. Each House will meet in open session except when more than half the members present in the House request a closed session.

Par. 2. In open sessions verbatim reports of the debate and documents presented at the National Assembly shall be printed in the official journal.

(Huyen con.) The form of a petition was not and cannot be used as a valid document to prosecute Deputy Chau, particularly when the Lower House had already rejected in plenary debate the proposal to prosecute made by the investigating committee.

Then, a one-page paper was taken to the houses of Deputies to collect signatures to authorize the executive to prosecute Deputy Chau. The petition was on one sheet of paper, the list of signatures on another, separate sheet of paper. These two pieces of paper were clipped together to make a petition. Who can guarantee that all signatures were for the petition? The proof was many Deputies deny that they signed this petition, as, for example, Truong Giò Ky Sanh. When Deputy Sanh complained that he had never signed, then the committee said they had made a mistake, so 102 signatures became 101. Then two other Deputies sent letters withdrawing their names because they had thought they were signing a petition only to debate the case of Deputy Chau on the basis of Article 37/2, not to authorize prosecution. Thus the number of Deputies came down to 99. But this is not even a three-fourths majority. How could the executive then be authorized by the President of the Lower House to prosecute Deputy Chau?

On December 6, 1969 the committee was formed after the Lower House received the letter of President Thieu. On December 30-31, 1969 a simple majority of 70 Deputies said that Deputy Chau had had liaison with his brother, a Communist, but it did not say anything about authorizing the executive to prosecute Chau. So then the President and the executive attempted to prosecute Deputy Chau under a case of flagrante delicto. But what about the letter of the President asking authorization of the Lower House to prosecute but not mentioning flagrante delicto?

When the President and the executive could not obtain authorization to prosecute from the House, they then shifted at will to another case and arrested Deputy Chau under Article 41 of the criminal code dealing with flagrante delicto.

But the character of flagrante delicto does not depend on the commission of the government but on the circumstances in which the offense is committed. The [French] Code of Criminal Instruction [applied in Vietnam since French times] defines flagrante delicto as (1) the criminal is caught red-handed on the spot, (2) he is caught immediately after he has committed a crime, (3) he is followed by public clamor (not rumor), or (4) he is caught with objects on his

(Huyen con.)

person that lead to the presumption that he has just committed a crime.

Now in the case of Deputy Chau, was he caught red-handed? Was any document found on him or in his house? No. The charge is therefore not valid. He is charged with being in liaison with persons harmful to the national defense from January, 1965, so the liaison happened years ago when he was chief of province. Yet in 1967 government security approved Chau as a candidate in the National Assembly elections. That shows that at the time of the meetings the government was not thinking of flagrante delicto.

Huyen adds something the judge objects to.

Judge: You do not have respect for the court.

Huyen: I have respect for you as judge of the court, but we are talking about the law. And you are in an unconstitutional position now.

Even a little child can understand the meaning of flagrante delicto. If a little boy takes candy and his mother catches him with the candy, that is flagrante delicto. But if, three days later, the boy tells his mother he took the candy, that is not flagrante delicto.

Chau was not caught in flagrante delicto up to the time that Tran Ngoc Hien was arrested -- and it was Hien who revealed the meetings between Chau and Hien.

Therefore, the executive action was illegal in either case. First, it did not have authorization according to the procedures of Article 37/2 of the Constitution. Second, neither was Chau caught in flagrante delicto. The action of the executive was unconstitutional.

Third, I do not impugn your personal position. I have respect for you. But when I try to clarify things on the basis of law, then I say that you are sitting here trying Deputy Chau unconstitutionally.

(Huyen con.) Legally, there is a separation of the judicial, executive, and legislative branches under Articles 3, 76, and 78 of the Constitution.¹ But under decree law 11/62 setting up military field courts, military judges are nominated by the President and the Minister of Defense. Thus the executive has two powers here: its own and the judiciary's. And this runs counter to the new Constitution, which guarantees the independence of judges.

Furthermore, this court is unconstitutional in cases of this sort because the sentence is executed immediately. Decisions cannot be appealed to the Supreme Court. Nor does it allow the Constitutional right of defense under Article 7/6 and Article 77.² This court is an emergency court -- but especially in cases of a Deputy elected by the people there should be enough time to check interrogations, etc. Yet there was no preliminary judicial inquiry in

1. Art. 3. The functions and powers of the legislative, executive and judicial branches of government must be clearly delineated. Activities of these three branches must be coordinated and harmonized in order to realize social order and prosperity on the basis of freedom, democracy and social justice.

Art. 76, par. 1. Independent judicial power is vested in the Supreme Court and is exercised by judges.

Art. 76, par. 2. A law shall establish the organization and administration of the Judiciary.

Art. 78, par. 1. The responsibilities of Presiding Judges and Prosecuting Judges are clearly delineated, and the two are governed by separate regulations.

Art. 78, par. 2. Presiding Judges make decisions according to their conscience and the law, under the control of the Supreme Court.

Art. 78, par. 3. Prosecuting Judges monitor the application of the law in order to protect public order, under the control of the Ministry of Justice.

2. Art. 7, par. 6. A defendant has the right to a defense lawyer for counsel in every phase of the interrogation, including the preliminary investigation.

Art. 77. Every court must be established by law with an element that judges and an element that prosecutes, both of which are professionally qualified. Courts must respect rights of defense.

(Huyen con.)

this case, only a police inquiry.¹ And not enough time was allowed for the lawyers to prepare the defense.

This court is set up so that when you capture a criminal in the morning you can punish him in the afternoon.

Under Article 64 of Law 7/68 I ask to send these exceptions [on the constitutionality of the arrest, the prosecution, and the jurisdiction of the military field court] to the Supreme Court. I give this letter to the clerk to register and send to the Supreme Court for decision.²

Dai: Halfway facing and addressing the audience while speaking]

The military field court was set up by decree to try those captured in flagrante delicto. How can we define here whether Deputy Chau was caught in flagrante delicto or not?

For instance, if I had been playing cards three months ago, and now I invite a judge to a reception and tell him about it, and you people take me to court and say I was caught red-handed, would that be correct or not? Because gambling is against the law.

If Deputy Chau was not caught red-handed, this court has no authority to give trial. [She reads the definition of flagrante delicto as given by the French jurist Marcel Prelot. It covers someone caught on the spot red-handed or immediately after a crime.] All present here cannot agree with you that Deputy Chau was caught red-handed if he acted from 1965 to 1968 and you waited until February, 1970 to prosecute. Do you consider that red-handed?

1. Vietnamese civilian law requires a preliminary investigation by the judiciary before the trial. Chau was arrested on Thursday, February 26, interrogated by the police on Friday, February 27, and brought to trial on Monday, March 2, without this judicial investigation.

2. Under this law of September 3, 1968 organizing the judiciary under the Constitution, all tribunals are obliged to allow constitutional exceptions to be raised. The trial court may transmit these exceptions to the Supreme Court or not, as it decides. If it does not, the lawyer raising the exceptions has the right to appeal the court's refusal to the Supreme Court for consideration within 7 days. In such cases it is mandatory for the lower court to suspend proceedings pending the decision of the Supreme Court.

Judge: [interrupting] Talk to the tribunal, not to the spectators.

Dai: ...and as Deputy Chau was not caught in flagrante delicto, this court has no competence to try Deputy Chau.

Prosecutor: The Lower House committee concluded that Deputy Chau was intriguing with the Communists, and at the plenary session the majority confirmed that Deputy Chau was in liaison with the enemy. The resolution signed by 102 Deputies was sufficient to agree with the executive to prosecute Deputy Chau. This court has jurisdiction because it was set up by decree law. Any cancellation of it should be carried out by decree law also. Up to the present time, the court has not been canceled by any decree law, so we may hold trial on Deputy Chau here.

Article 37/2 of the Constitution did not specify any form of resolution for removing parliamentary immunity. So the resolution of 102 Deputies is constitutional. In writing Article 37/2 the Constituent Assembly specified only that the "approval" of a three-fourths majority was needed, and the procedure followed was sufficient for that.

The position of Lawyer Huyen that debate is required applies to legislation. But here, for authorization to arrest and prosecute a Deputy, you do not need debate. Authorizing the executive to prosecute Deputy Chau does not require the same procedure as that required to pass a law; full debate in a plenary session is not necessary, because Article 37/2 does not specify the form of approval.

To go back to this court, it is still valid, because so far there has been no decree law terminating it. As lawmakers, the Lower House and the Senate must know of the operation of this court. If the Lower House and the Senate did not want to let this court exist and have authority, then they should have passed a law terminating it. But they have not done so in two years.

Huyen: The laws governing our judicial institutions have been set up gradually since the Constitution of 1967. For example, the Supreme Court has already settled that judges are nominated and confirmed by the Supreme Court. So in the two years after the Constitution any court not confirmed by the Supreme Court, according to the Constitution, is considered canceled. There was a deadline of two years only. Article 117 of the Constitution authorized the setting up of the whole judicial organization in two years only, in order to limit the executive, which might try to prolong the period before institutions were established.

Dai: The collection of Deputies' signatures must be considered a petition, not a resolution, because it lacks the essence of debate that is required by the spirit of democracy. We would like to know on what basis Deputy Chau is charged with having committed a crime in which he was caught in flagrante delicto.

/very emotional, partly addressing spectators again/

You here are citizens like us. When we go home to dinner tonight, would we like to have a representative who talks frankly and courageously for us, or just a representative who is just a mouthpiece?

Prosecutor: I said that this court was set up by decree law. Charges are brought under Articles 9 and 11 of this law. We prosecute Deputy Chau according to legal procedure whether Deputy Chau is considered as having been caught in flagrante delicto or not. It depends on the judge.

/Chau, still seated, is gripping the edge of the bench./

Dai: /very emotional/

In the charges against Deputy Chau nothing is said about flagrante delicto. Now we ask you not to prosecute Deputy Chau in this case unconstitutionally. We are not defending Chau. We are defending the regime. We should defend the democratic regime and do not want any foreigner to criticize it as an authoritarian

1. Art. 117. The other structures prescribed by the Constitution shall be established no later than two years from the date the first National Assembly is established.

(Dai con.) regime. The important thing is the Constitution and the court.

Crying

You and I, will we respect the Constitution or not? That is the important thing.

Judge: Keep your emotions out of it. This is a trial based on law, not emotions, so don't try to get the spectators emotional.

Dai: I am not emotional.

Huyen: Please clarify this case for the future. Is the trial of Deputy Chau based on authorization by the Lower House or on flagrante delicto procedure? First the trial was called on authorization of the Assembly. Now it is said to be flagrante delicto. We would like to know which. We want to be serious people.

TV lights are turned on now and again.

Judge: Please don't imply that we are not here as serious people. You are in contempt of the court.

Chau, who had sat back with his hands in his lap, now grips the edge of the bench again.

Dai: We protest against the executive's removal of the award of National Order from Deputy Chau on February 28 when Chau was arrested but not yet sentenced. A decree law suddenly withdrew the National Order from Deputy Chau on February 28, 1970.

Judge: This tribunal will deliberate whether it has jurisdiction.

Short recess

Judge: After deliberation we have decided:

1. To reject the argument made by Lawyer Huyen on Article 37/2.

2. To reject the appeal of Lawyer Huyen to refer the prosecution to the Supreme Court.

3. To reject the view of Lawyer Huyen that this court is unconstitutional.

We consider the case of Chau to involve flagrante delicto, so approval to prosecute by a three-fourths majority of the Lower House is not necessary.

We reject all the defense of Lawyer Dai based on unconstitutionality of the case.

Dai: We ask to appeal the exceptions to the Supreme Court.

Huyen: We ask the court to suspend the trial so that the Supreme Court has a chance to consider the exceptions.¹

Prosecutor: We ask the judge not to grant the appeal of Lawyers Dai and Huyen, because this court exists under decree law 11/62, and according to Article 11 of this law, no appeal is allowed. The Supreme Court deals with the Constitution and appeals from other courts, not from this court.

1. The activities of the field court have been going on for more than two years since the Constitution was promulgated. So the Supreme Court has no power over any court which does not grant appeals, like this one.

2. Each court has its particular character. And this court is to try emergency cases without appeal in time of war. So the Supreme Court has no power to consider an appeal on a case decided by this court. We ask the judge not to grant the appeal.

Huyen: We ask you to send our exceptions to the Supreme Court to consider under Articles 64, 65, and 66 of law 7/68, because this court cannot pass judgment on the constitutionality of this court. According to Article 66 your court has to transmit our exceptions to the Supreme Court even though we have no right to appeal on the verdict of the special court.

Dai: Even though your court is a special court, you should be within the framework of the organization of the Supreme Court. Your court has to send the exceptions to the Supreme Court, because your court has no right to say whether your own decision is constitutional or not.

1. See footnote 2 on page 16. The military court did not, in fact, respond to this request of Chau's lawyers in the trial and transmit the exceptions to the Supreme Court as required by civilian law. Huyen therefore went to the court's registrar-in-chief the next day to deposit the exceptions. The registrar-in-chief first refused to see Huyen, then yielded to the lawyer's persistence sufficiently to talk to him. According to Huyen, the registrar informed him that he was too busy and refused to take the deposition. Huyen then applied to the bailiff of the court to deposit the exceptions with the registrar. A lieutenant of the court informed Huyen that the bailiff was on leave, though Huyen says he saw the bailiff with his own eyes. Huyen finally sent a registered letter to the registrar with the exceptions.

Judge: [interrupting] This court has nothing to do with the Constitution. It is a special court under decree law.

Dai: We ask for our right to appeal exceptions in the case of Deputy Chau to the Supreme Court. We should like to emphasize that this case has a political aspect.

Judge: [interrupting, very excited] We are soldiers, and we are not afraid of any threat. We are here to defend the supreme right of the country.

Prosecutor: This court was specially set up under special conditions. Even the lawmakers after two years have not reconsidered the existence of this special court. So the procedures of this court are also special. We therefore ask the judge not to grant the appeal, because if you grant the appeal, this court will lose its special character.

[Dai strolls about the middle aisle, appraising everyone.]

Huyen: The Constitution admits of special conditions. But it is not in these special conditions that the Constitution is not respected. We are not protesting. We are simply presenting -- and asking your court to pass on -- our exceptions to the Supreme Court, because we cannot send an appeal through any other court, according to legal procedures. This is merely a small administrative matter.

Judge: If you speak that way we cannot talk any longer. This court is to defend the interest of the country. You don't have to come here to teach us administration.

[It is 7 p.m. by now. Daylight has faded, and the fluorescent lights have become dominant.]

Dai: This is a small detail, but it has a great impact on our regime.

Prosecutor: We ask the tribunal not to grant the appeal to the Supreme Court.

Judge: [reads court regulations] We have decided to continue with the trial. No passing on whatsoever of appeals is granted.

[Chau stands up as the indictment is read.]

Clerk: [reads indictment]

1. About the Accused

Tran Ngoc Chau, born January 1, 1924, at Nam Trung, Phu Vang, Thua Thien, the son of Tran Doc Te and Nguyen Thi Hoa, is charged with being in "liaison with a person who is carrying out activities detrimental to national defense."

2. Description of the Charge

Toward the end of March, 1969 the security agency discovered the strategic intelligence cell no. A-68 and at the same time arrested a number of Communists involved, for investigation. Among them were Tran Ngoc Hien, head of the strategic intelligence network no. A-68, and Tran Chau Khang, liaison cadre. The investigation revealed that there was liaison between these concerned and Deputy Tran Ngoc Chau with the mission of winning Chau over to their side to re-establish liaison with Tran Ngoc Chau in order to organize a network of strategic intelligence aiming at understanding the political and military activities of the Republic of Vietnam and the US in South Vietnam.

1. Tran Ngoc Hien, Communist captain, head of the strategic intelligence cell no. A-68, confessed that in August 1964 he was inserted into South Vietnam to carry out intelligence activities. He received the order to win over and set up liaison with his younger brother Tran Ngoc Chau, who was at that time chief of Kien Hoa Province. If this mission was successful, it would result in:

- a. understanding the political and military activities of the Republic of Vietnam.
- b. If necessary, Chau would supply legal papers to make movement [by Hien] easier.
- c. In the future Chau could be used for political purposes.

After entering South Vietnam, the concerned [Hien] asked his brother Tran Chau Khang twice to go down to Kien Hoa to meet Tran Ngoc Chau in order to find out the opinion of the latter. Chau agreed to receive the

(Clerk con.)

accused and gave to Trần Chäu Khảng a calling card with these words, "To allow the holder of this card to come to see me" in order to make his meeting with Chäu easier. He met with Chäu altogether eight times:

1. First time. In November 1965 he met Trần Ngoc Chäu to propose and find out whether Chäu would agree to support the Liberation Front of South Vietnam or not. He also mentioned obliquely to Chäu the program of the Front, as generally speaking against the United States and having nothing to do with Communism. Chäu asked him whether he had legal papers or not. He said that he had all legal papers. He stayed one night with Chäu. The following morning he left Chäu, and Chäu gave him 30,000 piasters about \$250. After this meeting the accused Hien proposed to his own supporters not to allow NLF guerrillas to assassinate Chau, first because of brotherhood and second because the path of winning him Chäu over was a long path.

2. Second time. In May 1966 when Trần Ngoc Chäu was assigned to Saigon to the RD cadre directorate he came to meet Chau a second time. This time he tried to raise the question that the United States used dollars and weapons in order to dominate other nations. He also raised the question of neutralization of Vietnam because the anti-American movement was at high tide. He pushed Trần Ngoc Chäu to win over his friends, personalities, and intellectuals, and assemble them into a group so that in the future when the opportunity came this group could be in liaison with the Liberation Front of South Vietnam. Chäu asked the accused whether he would like to meet the Americans or not. If so, Chau would introduce him to them. The accused refused, however.

3. Third time. Toward the end of 1967 during the preparation for his electoral campaign as a candidate for the Lower House, Trần Ngoc Chäu sent Khảng to look for Hien to come to meet him at his private house. Chäu complained to Hien that Hien moved around too much in all directions. If Hien were arrested, Chau would be in trouble. At the same time, Chäu asked Hien to forward to the latter's superiors a request not to forbid people to go to the polls, nor to sabotage the election by such acts as throwing grenades or shelling the people. Chäu also initiated the idea that he was

(Clerk con.)

not against the Communists in a blind way. Chau was ready to act for what was advantageous to the people and for peace. The accused did send Chau's proposal to his superiors. That is why the election was conducted beautifully in Kien Hoa.

4. Fourth time. About the middle of 1968 after two waves of general offensive of the Communists the accused went to meet Chau at the latter's private house to talk about Chau's trip to the US and Europe. During this meeting Hien noticed that Chau was a little shaky in his confidence in the strength and good will of the US, etc.

5. Fifth time. Toward the end of 1968, during the period when the American people were campaigning for the Presidential election in the US, the accused went to meet Chau in order to exploit his information concerning the two Presidential candidates, Humphrey and Nixon.

6. Sixth time. After the President of the US declared the bombing halt over North Vietnam, the accused went to meet Chau and tell Chau that in Vietnam the US cannot just do what it wants; not all of the decisions are made by the Americans and the Vietnamese just have to follow them.¹ Chau did request the accused to sound out whether or not North Vietnam would agree to receive a delegation of South Vietnamese Deputies if they were sent to Hanoi to meet the leaders of North Vietnam in order to find out the possibilities of resolving the war in South Vietnam. The accused then told Chau he should get in touch with the Front, the representative of North Vietnam, and he also forwarded Chau's proposal to his superiors. And after that he told Chau that Chau should follow the position of the Liberation Front of South Vietnam and Hanoi, which had been broadcast by their radio stations.² That meant that Chau's proposal was not accepted.

1. The original wording is a bit obscure here. Actually, it was Chau who told Hien this, as Hien thought the indignation over the bombing halt in Saigon had been stage managed by the US.

2. The indictment is in error here. It was Hien who received the instruction from his superior that in responding to Chau's proposal he should follow the line of the Hanoi and NLF radio.

(Clerk con.)

7. Seventh time. After Mr. Nixon was elected President of the United States, the accused came to see Chau with his two children in order to get information and at the same time to urge Chau to get in touch with the Liberation Front of South Vietnam in order to solve the war in South Vietnam; this time Chau gave 10,000 piasters [about \$85] to the two children of the concerned.

8. Eighth time. After Tet of the Rooster [February 1969] Chau, through the liaison man, invited Tran Ngoc Hien to come to meet him, and Chau proposed to send a delegation including a number of Deputies and religious representatives to Paris or to any other place in any other country in order to meet privately with delegates from North Vietnam and the Liberation Front of South Vietnam with the purpose of exchanging opinions and understanding, and to discover the possibilities of solving the war between Vietnamese and Vietnamese. Chau said that sooner or later the war should be settled with the Liberation Front of South Vietnam, but that it was too early to make this kind of declaration [publicly]. That is why he was afraid such a declaration would be dangerous. The accused also promised Chau that he would report to his superior Chau's above-mentioned group, which really had some strength. This time Chau let the concerned borrow 10,000 piasters.

The accused intended to meet Chau again in order to find out about sending the above-mentioned delegation to Paris to meet the representatives of North Vietnam and the Liberation Front of South Vietnam, but he was arrested on April 6, 1969.

2. Tran Chau Khang, liaison cadre, declared that he is an elder brother of Tran Ngoc Chau, and he acted as intermediary between Chau and Hien. He also received the briefing of Hien concerning the political and military victories of the Liberation Front of South Vietnam. Hien persuaded Chau to employ Khang in the RD department so Khang could use this position as an ambush position for the information and strategic intelligence network of COSVN.¹ During his employment at the RD department he stole from January 1967 to June 1967 a number of documents of the RD department

1. Central Office of South Vietnam, the NLF directorate.

(Clerk con.)

and passed them to Hien for exploitation. From April 1968 to April 1969 he stole three kinds of documents concerning the system of protection of secrecy, the program of planning for RD cadres, the report of the seminar, the pacification plan, and the priority areas for pacification, to be passed on to Tran Ngoc Hien.¹

Conclusion:

Consequently, Tran Ngoc Chau is accused of the crime of: "liaison with a person who is carrying out activities detrimental to national defense."

The sentence for this charge and punishment is prescribed in article 10 of ordinance 47 dated August 21, 1956, article 1 of decree law 49/67 dated October 30, 1967, and article 9 of decree law 11/62 dated May 21, 1962.

End of indictment.

Dai: I find that all my defense was fruitless, so I ask the judge to ask Deputy Chau whether he needs lawyers or not.

Judge: If the accused refuses to have lawyers hired by him, we will ask the court to designate a government-hired lawyer.

Chau: I ask your honor to allow me to consult with the lawyers on this issue.

Judge: The court does not force any lawyer to defend the accused, but we grant ten minutes to allow Deputy Chau to consult with his lawyers.

Dai: We have been asked by Deputy Chau to defend him, but if now Deputy Chau thinks our presence is not necessary, we had better withdraw.

Lawyer Tran Van Tuyen: We agree to accept ten minutes for consultation.

Short recess. Dai re-enters without her robe.

1. These are the sort of documents that are stamped confidential as a matter of course but are routinely given out to journalists. Khang, an unimportant figure, was sentenced to only five years.

Chau: My lawyers have exhausted all arguments, but your honor has not accepted my defense. If we continue this way, I don't think it is useful. I agree to let my lawyers resign.

(Fast exchanges, difficult to follow.)

Judge: Of course you can resign, but we cannot carry on a trial without a defense.

Tuyen: Please, your honor, allow us to withdraw.

Chau: I am a citizen. I know in advance I will be sentenced whether I have a lawyer or not.

Judge: (To Chau) No. You just came here to say simply whether you will have your lawyers or not.

Chau: I came here not to defend my case but just to defend my human dignity. I have served my country for 23 years.

Tuyen: We see our presence here is no longer necessary, so we have decided to withdraw.

(Court adjourns to the following day.)

1. There appear to be two reasons for the tactics of resigning. The more general one is to throw the case clearly into the political arena, by proclaiming that Chau cannot hope for any justice whatsoever from the legal process. The more specific reason is to prolong the trial -- through the bureaucratic delays in finding substitute lawyers -- until the newspaper strike is over. The newspapers are protesting against a government hike in the price of newsprint. There are some hints that the government, although annoyed by the newspaper furor, has furtively encouraged the strike for the time of Chau's trial. The government seems to be aiming to finish the trial in one day.

Meanwhile, in the outside world, Saigon has just entered a period of no rice reserve. The bumper crop is being held in the delta, either by farmers (which would be a good thing, because it would show they are rich enough to hold off on selling) or by Chinese middlemen (which would be a bad thing, for obvious reasons). Operations are suggested to collect the paddy.

Meanwhile, too, US officials are inaugurating their new system of measuring hamlet pacification in South Vietnam. Under the new system -- 139 computer questions for each locality -- 87.9% of South Vietnam's hamlets are relatively pacified.

In the war, 40 US B-52 bombers have, over the weekend, dropped more than 1000 tons of bombs on a North Vietnamese supply buildup inside Laos. General Creighton Abrams, US Commander, has the authority to call strikes directly in eastern Laos, officials say. GI strength is down to 467,350 as the initial phase of the third round of withdrawal starts. In lower War Zone D American infantrymen, it is announced, have captured 1000 pairs of Ho Chi Minh sandals, 2000 rice bowls, 130 water containers, 5 bicycles, and 5 bicycle inner tubes. Two more helicopters are lost for a total of 6,456 American helicopters and fixed wing aircraft lost to all causes in Vietnam since January 1, 1961.

In central Vietnam American and Vietnamese officials have completed, under constant enemy fire, their on-the-spot investigation of the alleged murder of 5 women and 11 children by a US Marine ambush patrol. The patrol had drawn fire each time it entered the village; one soldier had just tripped a booby trap when the shooting occurred, just after curfew; this was a free-fire zone; the Viet Cong families living there had refused to be resettled 500 yards away. The families had been told they could leave their homes after curfew if they carried lanterns and moved in groups of no more than six. One South Vietnamese officer said the bodies were found in the front dooryards of three adjacent grass huts. The question is whether the families were violating curfew or minding their own business.

SECOND DAY

On Tuesday, March 3, the scheduled opening hour of 8 a.m. passes, then 9 a.m., 10 a.m., and 11. Still the court does not convene.

What has happened is a misunderstanding on the part of the court -- and jealous guarding of its prerogatives on the part of the Bar Association. The prosecutor and the tribunal have both, independently, taken steps to appoint a new lawyer for Chau. One has dispatched a letter to the Bar Association asking it to appoint a lawyer of its choice. This is the normal procedure by which indigent defendants are provided legal counsel by the court.

But the second letter has gone directly to a specific lawyer, by name Mai Huu Tiep, asking him to take over as Chau's defense -- thus circumventing the Bar Association. Tiep, however, has informed the Bar Association of the request anyway, and the Bar Association has taken umbrage at this usurpation of its rights. It appoints instead Vo Van Quan, a lawyer's lawyer who nets close to the highest legal fees in Vietnam. Quan is apolitical, but his most famous previous client, shortly after the 1963 coup, was Ngo Dinh Can, the younger brother of Diem who had run I Corps as his fiefdom.

What with the complications of naming a new lawyer, the government, it seems, has become less sure of the speed of the trial. The sign on the press building in downtown Saigon announcing the Information Minister's press conference on the Chau case has been changed once again. It was first scheduled for Monday afternoon, then changed to Tuesday morning. Now it has been postponed "until further notice."

At 11:10 a.m. in the courtroom a call for order is made on a battery bullhorn. Those who have been sitting quietly and rather soporifically in the room bestir themselves. There is to be no smoking or standing on the benches, the announcement warns. MPs keep the center aisle clear, and as soon as journalists begin to talk to lawyers in the side aisles they clear these also.

At 11:15 the trial reconvenes. Chau enters and salutes. There are three more bandages on the side of his neck.

Lawyer Vo Van Quan: I was designated this morning at 10:30.

It is an honor for me. In technical terms I ask your honor to give me time to study the charges and all documents. I ask for the legal minimum of 15

days to study the documents. The reason I ask for this is that I put the national interest above everything.

Prosecutor: Yesterday your honor refused the same request from the lawyers. This court was set up under special circumstances, and it was not rescinded after two years. So it is automatically confirmed by the lawmakers. This court has an urgent character. This court has the responsibility to bring back order and security to the country as fast as possible.

Chau is standing at ease, with his hands behind his back.

Law 10/68, article 2, says that this court has the power to try cases on an emergency basis. But the request of the lawyer to postpone the trial for 15 days follows ordinary procedure, not the procedure of this special court.

The documents concerning the case of Deputy Chau can be summarized in only 16 pages. So the court could postpone trial for a short time, but not 15 days. If Mr. Quan refuses to accept the short postponement, your honor could ask the Bar Association to nominate another lawyer. If the Bar Association insists on the same request, the prosecutor has the right to nominate a citizen to act as a lay defender in emergency cases, on the condition that this citizen has a law degree.¹ So your honor could authorize the prosecutor to request a very short time for the designated lawyer to study the documents. Likewise, he could authorize the prosecutor to nominate a citizen holding a law degree according to article 10 of law 11/62 setting up this court.

Quan: What do you mean by "emergency"? Is the national security under threat? Fifteen days is needed to let the people know that the court is fair. The interests of the country require it. People would

1. This provision, never before implemented so far as could be learned, is intended to provide at least a modicum of defense in summary trials in battlefield situations far from any available lawyers. Saigon has about 200 registered lawyers.

(Quan con.)

like to say that there was a fair trial, that the lawyers were given enough time to study the documents, because the accused is a Deputy. But the prosecutor insists this is a special court with special regulations and special procedures.

I know that the prosecutor is more sophisticated and skilled than I am, so the prosecutor only needed a short time to study the case...

[Ripple of laughter in the audience]

but I need more time because I am not as talented as the prosecutor.

Judge: [Reads a letter from the Bar Association nominating Quan as Chau's lawyer and asking for 15 days for his preparation.]

Quan: I disagree with the prosecutor's view that this is an emergency situation. It was the prosecutor who sent a letter asking the Bar Association to nominate a lawyer. If it was urgent, the prosecutor could have asked right away, yesterday, to be authorized to nominate a citizen holding a law degree. I have three or four dossiers which have been sitting around and haven't come before the court for six or seven months or a year. Why is this case more urgent than the others? They are all urgent.

Prosecutor: This court is set up under special circumstances. It has its special procedures that we have to apply once this court is holding trial. This court was set up by decree law, so it is special. We do not force the Bar Association to follow the special character of the court. But if it refuses to nominate a lawyer and if it requests 15 days preparation and does not accept a short period, then we have to go back to special court procedures and nominate a lay defender holding a law degree.

Quan: This case is very important. National interest is involved. As citizens we cannot force the prosecutor to follow our wishes. But as I said, I am not so talented as the prosecutor. I need 15 days. If the court refuses, I must withdraw and let the prosecutor nominate a citizen with a law degree as a lay defender. I think that 15 days won't present any threat to national security. But the public -- as well as foreigners -- needs to know there has been

(Quan con.) a fair trial. So I need time to talk to Chau, to read the documents, to study the case.

According to the circular of the Prime Minister's office a lawyer has the right to a minimum of 15 days to prepare.

Judge: As a compromise between the lawyer and the prosecutor I agree to recess the trial to 8 a.m. tomorrow so the Bar Association and the lawyer can think it over. And tomorrow, if you won't agree to a short period, then I have to follow emergency procedures to allow the prosecutor to nominate a citizen holding a law degree to act as a lay defender.

Quan: I am firm in my demand. I cannot agree to come here and to start tomorrow at 8.

Judge: dictates a letter to be sent to the Bar Association saying that Vo Van Quan has asked for a fifteen-day postponement and inquiring if the Bar Association again confirms this demand. The trial is recessed until the following day. If the Bar Association, contrary to the court's decision, does not agree to designate another lawyer who will accept a shorter preparation time, then the court will order the prosecutor to nominate a citizen holding a law degree as a lay defender.]

The session ends just after noon. Chau makes the V-for-victory (or peace) sign as he leaves.]

Meanwhile, two Deputies who had signed the petition to prosecute Chau protest the trial -- not by rescinding their signatures, but by going on a two-day hunger strike in the lobby of the Lower House. A new commander for the 8,500-man Australian force in Vietnam, Maj. Gen. Colin A. E. Fraser, arrives in Saigon. Three more American helicopters are announced as shot down for a total of 6,459 since the war began for the US. A unit from the 11th Armored Cavalry reports killing six enemy soldiers without an American casualty in a 30-minute fight. And Ambassador Bunker departs Saigon to attend the wedding of the crown prince of Nepal, where Bunker's wife is ambassador.

THIRD DAY

On Wednesday, March 4, the usual crowd meets in the court-yard and exchanges information and misinformation from the scheduled opening time of 8 a.m. on. One source at the court says President Thieu was on the telephone to the court every quarter of an hour the day before. The court had been ready to compromise and give Lawyer Quan half of the fifteen days he requested to prepare, the same source says, but Thieu himself said absolutely not.

Another source reports that Thieu has just suppressed the "black (secret) funds" of several ministers, including Prime Minister Tran Thien Khiem, whose relations with the President seem to have been rather cool for the past couple of months. Vocal oppositionist Senator Tran Van Don has just returned from a trip abroad but is keeping unusually quiet on the Chau case -- and will maintain his silence. He apparently did not get much encouragement in the US. The Economy Minister has put in an appearance in one of the two Saigon cafes that are the hangouts of journalists, plainclothesmen, and all others who desire to glean intelligence or launch rumors. Why are the journalists vilifying him over the rise in the price of newsprint? the minister wants to know. He is simply an economic technician; it is the Minister of Information who is to blame for that rise.

At about 9:30 the session finally begins.

Prosecutor: We sent an urgent letter to the Bar Association concerning Lawyer Quan's request for 15 days to study the documents. We received a letter signed by the chairman of the Bar Association dated March 3 reaffirming the position of Lawyer Quan.

So, to apply article 10 of law 11/62 we have contacted and have received the voluntary acceptance of a citizen holding a law degree to act as lawyer. As of yesterday afternoon we have already allowed that citizen to see all the documents. Citizen Ho Duong Tuong has the honor to be designated as lawyer.

Tuong is young -- 28 -- and thin with an Asian thinness. He does not wear a lawyer's robe, but is dressed in a dark jacket and light trousers. His shoes are highly polished.]

Ho Duong Tuong: I am a lawyer, a member of the Bar Association, a candidate officer [one grade below a second lieutenant] promoted from Thu Duc in 1964. Now I am working for the Ministry of the Interior. I have a law degree.

[After the university Tuong finished his three years of apprenticeship in a lawyer's firm and became a member of the bar. Then he was drafted -- which automatically removed him from the active list of lawyers. He is now on assignment to the Ministry of the Interior; such loans of military personnel are common under Vietnam's total mobilization.]

Judge: Are you a volunteer?

Tuong: I was contacted and designated.

Secretary-General Ngo Khac Tinh of the Bar Association:

I protest against Mr. Tuong, who claims to be a member of the Bar Association. He does not have the authority to argue as a lawyer, because he has been drafted into military service.

[The appearance of Tinh causes some stir, both for its unexpectedness in the trial process and for the stand Tinh takes. The brother of Thieu's Information Minister, Tinh seems a most unlikely challenger of the government position on Chau. Yet he is going out of his way to oppose the flaunting of standard legal practice in the naming of Tuong to defend Chau.

[The cynics point out that Tinh is running for the chairmanship of the Bar Association in bar elections four days hence -- a position which in the new term will mean also membership on the commission for the 1971 elections. Numbers of lawyers oppose his bid, contending that he would not be independent in bar and election affairs but would too readily follow government direction. These lawyers tend to view Tinh's initiative in the Chau trial as a low-cost gambit to persuade his colleagues of his independence. In any event, he is to lose to the incumbent chairman in the election.

The stubbornness of the Bar Association over the truncated legal procedures of the Chau trial is hardly less surprising than Tinh's. Vietnamese lawyers learn to accommodate legal lapses as a matter of course; if they don't, they tend not to survive. "Our duty is to regularize things," ^{one}explains matter-of-factly, not to champion some abstract professional ethics. Whatever the personal hauls and strains, the lawyers as a whole depend on and profit from the existing system and have more of an interest in lubricating it than in overhauling its operation.

Yet there are unwritten limits within which legal flexibility is tolerable, it appears, and the government action in the Chau case has passed these bounds.

Whatever the causes, Tinh does put in a forceful appearance at the trial. He has come to another chamber of the court on a case of some ethnic Chinese who tried to flee the country illegally on the ship Amanna. Now he comes to this chamber and intervenes.

The end result is another unanticipated twist. Citizen Tuong, who starts out very confidently in his new role, quickly becomes discomfited as he is strung between his present military commanders on the one hand and the Bar Association on the other. His superiors want Tuong especially to argue Chau's case, apparently because with his background it could be claimed that Chau did enjoy the defense of a lawyer, that this was no kangaroo court. Tuong has reportedly just spent a sleepless night being briefed on the case by court officials.

Against the wishes of the military command, however, stands the Bar Association, which is threatening to disbar Tuong from any professional future when he returns to civilian life if he does not now adhere strictly to Bar Association regulations. Tuong therefore seeks to efface himself as much as possible between the two counterforces and finishes, to the open amusement of the spectators and the open annoyance of the judge, by himself asking for 15 days to prepare the case.

Prosecutor: Mr. Tuong just gave his background. He was not invoking the name of the Bar Association.

Secretary-General: Mr. Tuong is a lawyer-officer designated by the court. He can say now he is a citizen, but he cannot use the name of a lawyer or officer. He can claim he is a citizen only. We protest because we would like to observe democracy and the law. Mr. Tuong, our colleague, has violated the regulations of the Bar Association. The so-called volunteer cannot remain a member of the association if he does that.

Chau: [with great vehemence] I have talented lawyers hired by myself -- and your honor and the prosecutor have refused all arguments.

Chau puts the back of his hand to Tuong's abdomen in a gesture of dismissal.]

I cannot accept the citizen nominated by the prosecutor. [To Tuong:] Thank you.

Chau steps back to an at-ease position.]

Tuong: [excitedly] I am designated, and I have to carry out my duty as a citizen.

Judge: Start the trial.

Tuong: This case is important. I did not have enough time to study the documents. I request more time.

Prosecutor: This is an emergency court under law 10/68; we have many other cases. We have already given Citizen Tuong since yesterday to read the documents. We think that Mr. Tuong had enough time. It's up to your honor to give him more time or not, but we think that one day is enough.

Judge: We disagree with the prosecutor. We have to ask Citizen Tuong how long he would need.

Secretary-General: Mr. Tuong is acting today as a citizen, even though he is a member of the Bar Association. Mr. Tuong has violated bar regulations.

Tuong: I cannot wear the robe of a lawyer because I am a citizen, an officer. I cannot wear my uniform either because I come as a citizen.

Prosecutor: According to article 10 of decree law 11/62 this court is not concerned with internal regulations of the Bar Association. We request the judges to end this private dispute and continue with the trial. It is the chairman and not the secretary-general of the Bar Association who ought to be here. It is not up to the secretary-general to threaten sanctions and intimidation before the tribunal. The volunteer has been mobilized. He is no longer a lawyer. He is thus able to plead as a citizen.

Secretary-General: I have the right to intervene because I am an auxiliary of justice part of the judicial system. If you question my authority you can ask the chairman to come here. The Bar Association opposes this volunteer. It's up to the association to designate an appointed lawyer, but it refused because the court would not grant the lawyer the 15-day minimum to prepare the case.

Prosecutor: The tribunal must decide, yes or no; will emergency procedures be applied?

Judge: We accept Citizen Tuong to act as a lay defender. The dispute between Mr. Tuong and the association should be settled later. The problem of sanctions is an internal affair for the bar.

Secretary-General: In the interest of justice we came here to raise this question. Mr. Tuong has the obligation of a citizen to defend an accused, but he cannot claim to have the right of a lawyer to defend an accused.

Judge: We accept the clarification.

All the exchanges between the Secretary-General of the Bar Association, the prosecutor, and the judge have been in polite tones, with no raised voices.

Tuong: This is a very important case. A short period of one day is not enough for me to study. Because I

(Tuong con.)

was designated I ask for 15 days to prepare in accordance with the Prime Minister's circular.

The whole audience laughs; the judge pounds his gavel in some anger.

Prosecutor: This court is a special court, with emergency procedures allowing the lawyer or defender one day to study the documents. We come under law 10/68, not the Prime Minister's circular. We ask for immediate trial under emergency procedures with no delay.

Judge: Let the volunteer reply to the prosecutor.

Tuong: I disagree with the prosecutor. Everybody accepts the emergency nature of the court. But the Prime Minister gave the minimum time required for preparation of a defense as 15 days. As a citizen I have to do the job of a doctor caring for his patient. I have to do it consciously and conscientiously.

Judge: We disagree. The decision is that the trial be adjourned until tomorrow at 8 a.m.

Chau: This time is the time of most dishonor to me. I don't need the defense of this citizen. I request your honor to start the trial immediately.

Prosecutor: We have to act according to law. If your honor agrees with the request of the accused, there will be no defense; and we cannot have a trial without defense. The public is following this trial and wouldn't take the judgment as serious. The case is important. We do not want the public to misunderstand. Even though the accused refuses it, the right to defend continues to exist. We request your honor to decide. Lawyer Huyen still has the right to plead. He has not officially withdrawn.

Huyen was not present in the courtroom in the closing minutes of the first day when Lawyer Tuyen withdrew for Chau's lawyers.

(Prosecutor con.)

He is supposed to be here today to defend his client. But he did not show up; he is like a mother abandoning her child at the marketplace.

Chau: He speaks vehemently, from his position leaning forward on the podium, with his feet together. Tuong, standing next to him, shifts his weight from foot to foot several times while Chau is speaking.

Up to this time I am still a Deputy and a member of the Special Court which has the right to impeach the President and other high officials in case of treason or serious crime. It consists of the President of the Supreme Court, five Deputies, and five Senators. I request your honor and the prosecutor not to abuse my name and my lawyer Vu Van Huyen. I am not abandoned. When I discussed it with my lawyers, they agreed with me that their presence was not necessary. It was not my lawyers' fault. But because all arguments of my lawyers were rejected, I voluntarily requested them to withdraw. I don't intend to protest against the procedure.

You are all officers. I am a military man too. Accord me the honor of a soldier. If I lie I am not like a soldier. I cannot accept this citizen and thus become involved in the complicity between the prosecutor and this citizen. I would like to die clean, as a man of integrity. I beg you to free me from the defense of this citizen.

Tuong: I am not an accomplice of the prosecutor. I am designated, and I have the obligation to defend the accused. If the accused refuses me, I am ready to withdraw. I am not ambitious for higher position. I am an officer. I request your honor to allow me to withdraw if Mr. Chau agrees to defend himself without a defender.

Prosecutor: We disagree with Deputy Chau's slander about complicity between the prosecutor and the citizen. I do my job. I don't abuse the Deputy. I don't do anything but execute the orders of the government. Let the tribunal decide.

Judge: The court always requires a defender. It accepts the citizen. The court is adjourned until 8 a.m. tomorrow.

Meanwhile, Thieu invites Senators from the investigating committee that is looking into the Chau affair to lunch. President Thieu and Vice President Ky meet for three hours in the afternoon. Thieu reportedly would like Ky to make some public statement on Chau's guilt; Ky maintains a pointed public silence.

Outside of Saigon, 78 North Vietnamese and Viet Cong soldiers are reported killed by allied forces in four actions near the Cambodian border. The only allied casualties reported are 3 South Vietnamese civilian irregulars wounded. In one of these actions the civilian irregulars, led by American green berets, clash with North Vietnamese troops for the second consecutive day. The redeployment -- for the first time in the war -- of North Vietnamese regulars to the populous Southern delta has now reached five regiments or over 5000 troops. So far the North Vietnamese have accomplished little in the delta, and the consensus seems to be that as Northern "foreigners" they will be more of a liability than an asset to the local Viet Cong. No one is quite sure, however.

In the evening the press strike ends, and the papers fill page one with the Chau trial -- and with the threat of some journalists to shave their heads if the price of newsprint is not lowered.

FOURTH DAY

On Thursday, March 5, the trial begins early. Scheduled for 8:00 a.m., it does start by 8:30. Today everything proceeds with businesslike dispatch; there are to be no surprises.

In the audience Vo Van Quan, Chau's first appointed lawyer, sums up his expectations to some Western correspondents: "When politics enters the courtroom, justice goes out the window."

Ho Duong Tuong: I agree to carry out my duty as a designated citizen, but I am still a member of the Bar Association, and for my future I ask your honor to allow me to withdraw.

Prosecutor: I have already designated two other citizens who have agreed to defend the accused, and I have let them read the documents since yesterday.

One of the two, the reserve defender, will not figure in the trial. He is recognized by Western journalists as an army major who was interpreter for a recent suspended trial of three South Vietnamese officers charged with murdering two American MPs in a night club brawl.

The primary new lay defender, Duong Cu, is, like his immediate predecessor in the trial, a young candidate officer. He graduated from the university in 1964. He is a man of pronounced oratorical prowess, which he last displayed shortly after he was drafted, by leading a protest strike by recruits against early busting of failing officer candidates to boot camp. As a result of the strike Cu was himself sent to non-commissioned officer training, from which he emerged in 1969 with an assignment to "military justice." This may or may not mean he is an MP. He declines to divulge his unit to inquiring journalists. Whatever he is, this trial appears to be his chance to make a comeback.

Duong Cu: Speaks with ordered modulated tones, emphasizing his words with body motion

As defenders, to defend the accused efficiently, we wish your honor would allow us to apply the circular of the Prime Minister establishing the minimum defense preparatory period of fifteen days. If you refuse, we would like to apply Article 33 to allow us 24 hours to talk to the accused. If Deputy Tran Ngoc Chau insists on having the trial carried out immediately, we are ready to defend him now.

Prosecutor: According to the special procedure of this court, defenders need only 24 hours -- which have already passed -- to study documents and talk to the accused. I request the court to allow the trial to begin now.

Judge: [after collecting written votes of the tribunal members on whether to start the trial or whether to grant the request of the defender, addresses Cu]

We would like to know the exact reason why you ask for more time, and we would like to ask the prosecutor why he does not want to give more time.

Prosecutor: This special court has to act on emergency cases to reestablish order and security. Article 4 of the Constitution is against Communism in any form; and this case is related to Communist activity.¹ We would like to reestablish order and security as fast as we can. We ask your honor to begin the trial immediately.

Cu: [forcefully] As we already presented our case, we came here to do our best to defend the accused. We would like to raise the question of prosecution order no. 1173 of February 19/70 to the mobile military field court signed by the Minister of Defense. We would like to know on what basis Deputy Chau was brought to trial on a case of flagrante delicto. The prosecutor has not given the reason, so Deputy Chau cannot be tried on flagrante delicto.

Prosecutor: I cite decree law 11/62 and law 49/67.

1. Under Article 8 of 11/62 the authorities have the right to prosecute an accused directly before the court without preliminary interrogation.

2. Under Article 41 of the Criminal Code there are four cases of flagrante delicto. The content of the case can prove why it is a case of flagrante delicto, one of these four. I shall show how these provisions apply to the trial of Deputy Chau after the trial begins, if your honor allows it. But we cannot give the reason before the trial starts, because that is part and content of the trial.

1. Article 4. The Republic of Vietnam opposes Communism in any form. Every activity designed to publicize or carry out Communism is prohibited.

Cu: ?

Judge: ?

Cu: We raise the question whether the deputy was captured in flagrante delicto or whether he committed a crime in flagrante delicto. We would... ?

Chau: Yesterday these two citizens did come to Chi Hoa [where Chau is being held] on the order of Chi Hoa Prison. I had to receive the visit of these two citizens. After talking to them, I asked them not to accept my defense. The reason is that my lawyers and the lawyer designated by the Bar Association had all their arguments rejected. I think that defense is not needed. I ask your honor to agree with my aspiration. If I am forced to accept the defense of these two citizens I have nothing to say but to accept any sentence this court hands down on me. This trial has lasted three days already. I am tired. But as an officer I would like to observe discipline. I come here to answer questions.

Judge: As I said before, the court has to follow the procedure of law. The judges must hold a fair trial. They must listen to the arguments of the defender as well as those of the prosecutor before passing judgment.

Chau: I earnestly request these two gentlemen to withdraw.

Cu: We earnestly request the court to record the right of Mr. Chau not to accept our defense.

We request the presence of Tran Ngoc Hien as an important witness.

Judge: [addressing Chau] I am going to read your declaration of 27/2/70.¹

1. The February 27 Chau statement given in this newsletter is taken from the written document rather than from the document as read in court. The judge did read most of the document aloud. There were a few omissions, however, such as the opening paragraph. Significant omissions are indicated in footnotes.

Chau Statement of February 27, 1970

Reference to the order dated February 27, 1970, mentioning that before interrogating the accused Tran Ngoc Chau we have read all the articles of law in the Code of Military Justice, for example, Articles 102, 100 of the military law; Article 12 of decree law 11/62 establishing the military field court, and the note of service no. 8 establishing the special military court, and the summary of the procedure before the military field court in emergency procedure. The decision of the court has no appeal. The sentence has no appeal either. The field court also does not have enough documents [does not need as many documents as a civil court]. After explaining these things to the accused in the presence of his lawyer, the lawyer agreed to let the accused make a statement in order to let the court clarify things better during the trial.

We realize that there is the agreement of the accused and the lawyer, so we are taking the declaration of Tran Ngoc Chau, born January 1, 1924:

My first word is that I talk in the name of a Deputy and a member of the Special Court and as a retired high-ranking officer. I protest against my arrest in the Lower House. At that time I was wearing the National Order decoration. But a number of plainclothesmen ripped off my National Order and threw it away. And a number of people beat me at the same time and then dragged me away.

I have five brothers and three sisters. Mr. Tran Chau Khang and Mr. Tran Ngoc Hien are my elder brothers. I have another brother named Chuong who is now in North Vietnam and another brother who is a captain in the armed forces of the Republic of Vietnam, Que.

Hien and I, we were in the Boy Scouts headed by Mr. Tu Quang Buu from 1940 to 1945. After that I joined the Viet Minh military forces.¹ And I "surrendered" to the nationalist side in 1949.

[Here the judge has mistakenly read "hang," meaning "surrender," rather than "hang ngu," or "return to the ranks."]

Chau (interrupting): No, I "returned," not "surrendered."

Judge (continues reading):

I attended the Dalat [Military] Academy in 1949, and from 1951 to 1954 I was an officer in the field. In 1955 I was the director of training of Dalat Academy cadets. In 1957 I was Deputy Chief of Staff of the 4th Division. That 4th Division is now called the 7th Division. In 1958 I was Chief of Staff of the Quang Trung training camp. In 1960 I was the commander of the Regional Forces and Popular [territorial] Forces command of the Eastern Bassac Zone [in the Mekong Delta]. In 1962 I was the lecturer of the Assemblymen's Council. From the middle of 1962 until the middle of 1963 I was the chief of Kien Hoa. From June 1963 until the end of 1963 I was mayor of Danang. From 1964 to the end of 1965 I was again chief of Kien Hoa Province. From the end of 1965 to the day I was elected to the Lower House I was the program director for the Revolutionary Development department.

From 1949 to 1965 I did not see Mr. Hien. In 1965 Mr. Hien asked Mr. Khang to tell me that he wanted to see me. I was very emotional because he was my brother, and I agreed to let him see me. I immediately wrote on one of my calling cards: "The person holding this paper is authorized to see me," and I gave it to Khang to pass on to Mr. Hien. I did it without knowing the intention of Hien at all or why he wanted to see me or if he had already abandoned or still followed the other side.

1. In the version read by the judge at the trial Chau had added, speaking of Hien, "We were so close, the closest of the family." He also said that he and Hien served in the same region in the Viet Minh. The Boy Scouts were a notable nationalist organization; Mr. Buu now holds a high position in North Vietnam.

After many years the two brothers met each other again;¹ we were very happy to talk about our families, and after that Mr. Hien told me that he just came from North Vietnam, and he would like to know my attitude regarding the Front and the Americans. Mr. Hien would like to know whether I had changed my attitude toward the Americans after the death of Mr. Ngo Dinh Diem or not. When I learned that Mr. Hien was still carrying out activities for the opponent I advised Hien to return as a hoi chanh [in the government program to integrate NLF defectors into South Vietnamese society]. I let him know that my position was anti-Communist and that my attitude toward the Americans -- even though I was very sad because of the death of Mr. Diem -- but I haven't changed my attitude [toward the Americans] at all. After hearing me say so, Mr. Hien said, "As we cannot persuade each other, we had better put this kind of argument aside."²

Mr. Hien stayed with me overnight, and I gave him a gift of 30,000 piasters out of brotherhood.

As I was afraid that Mr. Hien would be arrested within my provincial boundary and my conscience would be very disturbed -- that is why I ordered my private car to take him out of my province.

The second time Mr. Hien came to see me by his own choice about May 1966. At that time I was the director of the Revolutionary Development [training]. At that time there was a Buddhist crisis in Central Vietnam which was spreading to Saigon. For instance, the Buddhists were putting altars in the streets. Mr. Hien knew that I was a Buddhist follower. Mr. Hien said the Americans were repressing the Buddhists, and the people in the South are fighting against the Americans and the government.

1. In Vietnamese a speaker may shift into the third person when talking about himself, especially in narrative or descriptive portions of conversation.

2. This paragraph omitted in the trial.

"Little Brother,¹ you say that you are a Buddhist. Can you bear this situation?" I answered that in the South it is very strange. The people are against the Americans and against the government, but they are also against the Communists. But there is freedom. I confirmed to Hien that my anti-Communist position had not changed. Realizing that, Mr. Hien proposed to me, "You can continue to stand on your nationalist position. You have many acquaintances who are prestigious. You can gather them so that in the future perhaps the Front and the nationalists will shake hands, and you will deserve your contribution." I told him that I was so busy with the RD program that I had no concept of that. Concerning the American repression [of the Buddhists], the government would take care of that. That was my answer to Mr. Hien.

Mr. Hien did not propose to me that I work for the neutralization of South Vietnam here. Mr. Hien just raised the problem of neutralization of South Vietnam to me. I said, "South Vietnam is a neighbor of Red China. It cannot be neutralized."

Then I tried to persuade Hien to return to the nationalist side. Mr. Hien, half jokingly, half seriously, said, "If I return, that guy Ky will get me." According to Hien's psychology, the Americans were ordering everything. I answered that I would guarantee him. If he didn't trust me, then I would introduce the Americans to him to make him trust us.

I would like to explain this case. I didn't want my brother to be either arrested or held, and at the same time I had the hope that I could be successful in persuading my brother to return. Concerning the meeting with my brother, I did not report it to my superiors because at that time my superiors had changed often, and they

1. "Chu," an affectionate form of address in Central and North Vietnam.

never paid attention to political problems.

However, I was conscious of the responsibility of my position, and that by having such liaison misunderstanding could be created, and the result would be bad for me. That is why I reported The meetings to Americans who worked with me as partners or as my friends, for instance, Mr. Thomas Donahue, Stuart Methuen, and John Vann.¹

Right at the first meeting with Mr. Hien I informed these Americans and explained to them the reason why I did not inform the Vietnamese authorities -- and also because they promised me that they would be responsible for reporting this to the Vietnamese authorities.

I would like to confirm that I am not a CIA agent, as the papers published. The CIA did propose to me that they meet Mr. Hien privately. I disagreed. At that time Mr. Vann, the representative of Mr. Ambassador Henry Cabot Lodge, expressed the same idea in order to try to understand the position of the Communists on the problem of war and the glimpse of peace in the future.² I thought that it would be advantageous for the nationalist side; that's why I agreed to tell Mr. Hien about the proposal. But Mr. Hien refused, and I did not know whether they did meet each other or not.

At the beginning of 1967 I was afraid that the CIA was mad at me because I refused to set up a trap to catch Mr. Hien. That's why I met Mr. Khang -- to tell Khang to pass on the word asking Hien to come to see me. When I met Hien this time it was the third time. At that time I was conducting my electoral campaign. I used the pretext that Mr. Hien had been moving around too much. He could be arrested by the authority, and I advised Mr. Hien to return to North Vietnam or to go into the jungle. In fact, I was afraid that the CIA would take out its anger at me by capturing Mr. Hien.

1. The name of John Vann was mentioned at the trial, but not the names of the other two.

In this conversation I did tell Mr. Hien that I would be a candidate to the Lower House from Kien Hoa. Mr. Hien said, "The Assembly is very dirty. It is a puppet. Why are you trying to go into that Assembly? The majority of the people in Kien Hoa are following the Front. If you were supported by the Front, you would be elected." I answered, "No, I do not need the support of the Front," and I launched the challenge that if the majority of people in Kien Hoa follow the Front, then the Front should just leave the people alone to see whether the people would participate in the election or not, and then you would see whom the people follow.

The fourth time I met Mr. Hien was in the middle of 1968 after two offensives. Before that meeting I did make a trip to the US, France, Great Britain, and Italy. The trip was offered to me by the US State Department. This invitation was handed to me when I was director of RD Training, but I had not yet made the trip. That is why when I was Deputy I was invited again. So I made this trip as a private citizen, not as a Deputy. After my return from this trip I wrote a book about my trip to the capitals of the US, Great Britain, France, and Italy on the problem of Vietnam. When I was in the US I tried to know whether the Americans could increase their troops In Vietnam or not. Based on this position I talked to Mr. Hien: Don't think that when the Americans do not increase troops, that the US or Vietnam has lost. Even though it is a fact, don't think that you would win victory over this side. This is why you should look for mutual concessions in order to end the war.

The fifth time I met Mr. Hien was when the US was having its Presidential election campaign. At the bottom of my heart I wanted very much to see Mr. Nixon elected because I realized that Mr. Johnson had decided not to increase more troops, because I was worried that the fighting would turn disadvantageous for Vietnam. In hearing me say that I would like to see Mr. Nixon elected, Mr. Hien was very mad at me. This was the first time that Mr. Hien was so mad at me since the day the two brothers met each other.

The sixth time, Mr. Hien met me when Mr. Johnson announced the halt in bombing of North Vietnam. Mr. Hien looked as if he were in high spirits and expressed his confidence that the Front would win because South Vietnam would lose its morale. For that reason I told Mr. Hien that in the South the Americans could not just do what they wanted. The American bombing halt had not changed the fighting spirit of the people of the Republic of Vietnam at all. Taking this opportunity, I asked Mr. Hien whether North Vietnam would agree to the method of settling the war. Mr. Hien answered that North Vietnam did not recognize South Vietnam, and North Vietnam could talk only with the Front. On this point I answered that the Assembly delegation could talk only with the North. It could not talk with the Front.

The seventh meeting happened when Mr. Nixon was elected President of the US. Mr. Hien came to ask me about my position on this result. I told him that I was very happy because with this President I had more hope than with Johnson. Then Mr. Hien asked me whether with Nixon Thieu's position would be consolidated or not. I told him that with the election victory of Nixon Mr. Thieu's position would be very strong.

This time Mr. Hien brought along with him two of his children, aged about 5 and 7. I gave 10,000 piasters to my nephews.

The last time, I met Hien after the Tet of the Rooster [1969]. I realized that the US was going along with the North Vietnamese, and I suspected that it would go along with the Front also, to solve the war. In the meantime, I realized that the government of the Republic of Vietnam was in a negative position. I was afraid of settlement between the US and elements of the other side, which would be very disadvantageous to the Republic of Vietnam. That's why I passed on the word to Mr. Hien to come to see me, and I proposed to Mr. Hien that he persuade North Vietnam and the Front to meet directly with the delegation of the Assembly of South Vietnam in order to find a way to solve the war. Mr. Hien said that was

impossible, but arrangements could be made for North Vietnam to meet a delegation of personalities from South Vietnam with the Front present.

After this meeting Mr. Hien was arrested. I was almost sure that it was because the CIA and also Ambassador Bunker suspected that I and my brother were playing an intermediary role for Mr. Thieu so that he could talk to North Vietnam without informing the US.

[Probably in answer to interrogators' questions:]

I was present at the trial of Mr. Hien as an observer. I confirm that I did not distribute leaflets during this trial. I only passed out my declaration to Lawyer Huyen and Lawyer Huynh Ngoc Anh. In this declaration I acknowledged that I did have liaison with Mr. Hien, but I did not carry on activities for the Communists. This declaration I distributed to the press at the Lower House. But I did not distribute it at the court.

During the trial of Mr. Hien, when the prosecutor asked Mr. Hien whether he had had any liaison with me, Mr. Hien said he did, but said that I was very anti-Communist.

After Mr. Hien was arrested, those who are against me made charges against me many times. That is why I issued my declarations, to clarify my position.

I did hold two press conferences to explain the liaison between me and Hien; in substance I summarized the liaison as follows:

The reasons for my not denouncing my brother were

1. Brotherhood. Nobody is so cruel as to denounce his brother.

2. My brother swore he would never participate in assassinating the people. He just wanted to know the situation in South Vietnam in order to report to his superior.

I thought that this was a way to let the other side understand our strength better and make the other side become less thirsty for war in order to find a solution to end the war quickly.

In the declaration of Mr. Hien it is very clear that my anti-Communist position remained unchanged. Because of this patriotic spirit I would like to see the war end, but at the same time I would like to see the regime of freedom continue to exist in the South. That is why I had those meetings.

I did not realize that these meetings violated the law forbidding them. However, I was worried that I would be suspect because of these liaison meetings. That is why I informed the American officials as well as American friends of mine. And I hoped that they would inform the Vietnamese authority at a high level.

Mr. Trần Chau Khang was a very rich person. He rented a boat to evacuate all his property from North Vietnam to South Vietnam. But because of failure in business he became bankrupt. When I was director of RD training I did apply for the employment of Khang for internal services in the RD department.

I strongly confirm that I never played the role of intermediary between the US and the NLF in the attack on cities in the Tet offensive [of 1968]. On the contrary, I advised the Vietnamese authorities and Mr. Bunker before August 1967 to put top priority on organizing the people and reinforcing the security in the capital and other cities, as precautionary measures against the Viet Cong offensive and revolt.

[Official note: We have given to interested persons the clarification dated 20 June 1969 signed by Chau and his declaration published in Cap Tien no. 262, dated 18 February 1970.]

I acknowledge my clarification and my declaration. In the declaration there were some words which were incorrect, but the contents were correct.

Chau: I would like to correct some small details. First, I did not come voluntarily to make this declaration to the prosecutor. I was forced by the prosecutor to make this declaration. I made this declaration only one day after I was arrested and manhandled. My mind was confused, not clear, and my lawyer Mr. Huyen was not present for the whole period of interrogation and declaration.

Judge: You knew Hien was a Communist spy leader of a strategic cell. You could report your meeting to the CIA, but you had to report to Vietnamese government authorities. You argue that the CIA would inform the Vietnamese later. Why didn't you do that /report directly to Vietnamese authorities? Even if the CIA informed the Vietnamese government, you are still guilty. And your attitude in this case proves that you look down on Vietnamese government authorities.

Chau: ?

Judge: ?

Chau: /vehemently, with a bulldog thrust to his neck, his hands spreadeagled on the podium/

I am here by force. I am not defending myself, but I would like to present my case. In 1964/5 /after the overthrow of Diem and before Prime Minister Ky had established himself/ I was a province chief. During that chaotic situation the Vietnamese government did not have any legal authority. The Vietnamese government was completely controlled by the Americans. Representatives of the central government came to see me about the military situation, to ask how many outposts were left in the countryside. They asked me nothing about politics, about the people in my province. You know under Diem's time every 15 days province chiefs talked to the president. You know the Vietnamese were sad /after the fall of Diem/ and felt very shamed to think they had better work with Americans rather than Vietnamese.

Judge: /in quiet tones that seem intended not to shut Chau up but to calm Chau's flow of vehemence/

We have 44 provinces. The other province chiefs did not get in touch with the Communists, and no province was lost to the Communists. If all province chiefs acted as you did, South Vietnam would have long since been lost. If they lost morale as you did and tried to

(Judge con.) contact the Communists like you, South Vietnam would have been lost. If all echelons of authority from the center down had the same thinking as you, South Vietnam would have been lost.

Chau: If Kien Hoa was lost after my two years as province chief, if I did something wrong or was bad, then why when I left Kien Hoa was I decorated with the National Order and the military Order of Merit? I think that your honor yourself should congratulate me rather than castigate me.

/ripple of light laughter in audience/

I met my brother Hien not to help him but to persuade him to return to the nationalist cause. When I was at the RD center I was also decorated when I left that department.

The reason I did not report my meeting with my brother to my immediate superiors was because as I said before, there was a chaotic situation. But I did mention the case to my American counterpart.

Judge: I would like you to know the seriousness and danger of Hien's activities. He carried on activities detrimental to national security.

Chau: /very wrought up/ Hien is my brother. I know him better than any of the other members of my family. We lived with each other; we were in Boy Scouts and went into the resistance together.

The first time I met Hien I scolded him very much. I asked him, what is your rank? Many of your friends have high positions. What are you doing for the country, if you think you are serving the country? You blame us, the South Vietnamese, for following the US. I told him North Vietnam follows China and Russia. He blinked his eyes as tears welled up. I know that Hien lived under Communist control, but fundamentally at the bottom of his heart he was still a nationalist.

Another thing, his wife and children, and his wife's relatives live on the other side. I believe that he may have been afraid of retaliation by the other side.

One thing I dare to say: Hien did play an important role in bringing about the Paris conference. I disagree with the profile your honor gave of my brother.

Judge: The Communists are very shrewd. They never confess they are Communists. They strive to play the role of nationalists. According to the interpretation of your declaration your province was quiet in order to let the people in Kien Hoa go to vote and elect you as Deputy. Consequently, you were elected thanks to Communist collusion. You said that you did not accept the help of the other side. But who knows about that? The proof is that your province was quiet and you were elected.

Chau: Leaning on the podium again, more bulldog than ever, a constant edge to his voice

I met Hien in late 1965. How could Hien organize help for me that long before that T967 election time, when I was province chief? And assuming that Hien really helped me, then the authorities were blind.

I would like to get the attention of your honor. But this court is not fair. This court judged the case of Captain Pham Doan De.¹ I know him very well. I don't want to be jealous or speak against him. I am a friend and acquaintance of his family. He had the same liaison with Hien that I did, but he was acquitted by this same court.

I could have escaped very easily if I had wanted to, but as I said before, I would never run away. That is why I am here.

Judge: We have not charged you with anything yet. The prosecutor will do that. We are just asking you questions to clarify your declaration. We do not force you to say anything or admit anything against your will. If you did not know in advance the Communist plans for a Tet offensive, why did you advise the US on a security plan? As you did know about it, why did you not inform us?

Chau: I did not have specific information about the Tet offensive. But as I worked at the RD center and through the reaction of Hien I guessed the enemy intentions and purposes of the Communists, thanks to my experience. Even the CIA was very weak, because when they were at the RD center they showed me that they did not understand. I tried to explain to them. If they had listened to me, to my experience, and applied exactly what I said, the Communists could not have done much.

1. Dr. De was one of the several military and police officers who were either acquitted or never brought to trial over contacts with Hien which closely paralleled Chau's own contacts with his brother.

Judge: We have nothing to do with the CIA.

Chau: All right, I agree with your honor not to say anything about the CIA. May I continue?....The Vietnamese authorities /unspecified/ did not pay attention to my experience, my advice. So with the permission of the Americans I did give a three-hour briefing to Ambassador Bunker and other Americans in August 1967. And the Americans bothered to take my suggestions. That's why the offensive of the enemy was greatly reduced.

Judge: Why did you introduce your brother Khang to work for the RD center? Was it to make him your liaison agent?

Chau: No, Khang, my eldest brother, had no employment, so as he was my brother, I helped recruit him for Revolutionary Development in an unimportant service position.

Judge: Khang is important, according to the police report.

Chau: I didn't need Khang because I could deal directly with Hien. Why would I need to use Khang to observe RD activities and make a report himself?

Judge: Look, your brothers and you have carried out activities damaging to the country, and you took refuge in the Lower House to carry out your activities.

Chau: /with hatred, interrupting the judge/

| According to Article 4 of the Constitution the Vietnamese people are against the Communists. But what about the meeting of our delegation with the Communist delegation in Paris?

Judge: That is a public meeting. Your case is a secret meeting. You are attempting to libel the President of Vietnam.

Chau: President Thieu and /Former/ Foreign Minister Thanh said we could meet the NLF.

Judge: You cannot compare yourself with the President and the Foreign Minister.

Chau: I am a Deputy. I have the right.

Judge: No, you did not have the right without the authorization of the Chairman of the Lower House. But I don't want to argue because...

Prosecutor: Deputy Chau attempted to say that we have colluded to try him because we have designated the citizens to defend him.

/Defender Cu walks back to the spectators' section and talks with Mrs. Thu./

Prosecutor (con.) Now I would like to ask Deputy Chau: As you gave Hien money and gave him transportation, and as you were a member of the provincial security council, was that collusion or not?

Chau: As province chief I had many responsibilities, not only arrests and administration, but also carrying on the chieu hoi program /to attract NLF defectors to the government side7. I planned to persuade my brother to return to the national cause.

Prosecutor: Here I ask you as head of the security council of your province: not only did you have to arrest Hien, but you had to inform the council first and let the council decide on the case of Hien. You cannot decide a case of that seriousness yourself.

Judge: I would like to clarify and explain what the prosecutor is saying. You did not follow the procedure and activities of the security council. This is what the prosecutor would like to ask you.

Chau: Hien is my brother. I am a nationalist. I love this country, its traditions, the tradition of the family. I cannot denounce my brother. If you force me to denounce my brother, and if South Vietnam is so cruel, then I deserve to be sentenced.

Judge: You are cruel -- it is not South Vietnam that is cruel -- because as head of the security council you signed the order of arrest for a lot of people. Now I can say this: your activities even when you were chief of province have never been very clear.

Chau: I was one of the three deputies who had the highest number of votes. I ask your honor to do me a favor and not abuse those who voted for me. You can only abuse me....

Judge: /interrupting7 Yes, with the collusion of the Viet Cong you got the high number of votes.

Chau: No, your honor, I refused this offer of NLF help proposed by Hien /Chau pounds the podium7 because I told Hien I did not need it. Hien asked me how I could be elected without NLF help. I challenged Hien: if the NLF lets the people in Kien Hoa go to the polls I will be elected without your help.

Prosecutor: According to the confession of Hien, you asked for help from the NLF, didn't you?

Chau: No, I never asked for NLF help.

Prosecutor: You proposed to have two delegations of North and South Vietnamese parliaments meet to negotiate. Didn't you know that was very wrong?

Chau: No, my proposal was supported by over 60 deputies in the Lower House.

Prosecutor: You said you spent three hours briefing the US, predicting the Tet offensive. Why didn't you inform the Vietnamese government about the result of the briefing?

Chau: It wasn't because I knew about the Tet offensive that I gave the briefing. But if the authorities had listened to my advice, then the Tet offensive could not have taken place. Anyway, thanks to the application of part of my advice, the damage was reduced.

When I realized that all echelons had to work under the control of Americans at that period, I felt so ashamed that I had to ask Mr. Thieu, who was at that time chairman of the leadership council, to allow me to resign as province chief. But I planned to continue my fight against communism in another field. Mr. Thieu asked me to stay on while waiting for replacement. When I asked to resign from the RD department I was refused. When I attempted to run for the Constituent Assembly I was obstructed. I had to wait until the Constitution was promulgated to allow me to run for the Lower House.

Prosecutor: Do you admit that you continued to have contact with the CIA or not?

Chau: Our ancestors did not need foreign aid. I was in liaison with the Americans to save South Vietnam for independence, not to be a puppet of foreigners.

Judge: Angrily No, you were in touch with the Americans to beg for their dollars, that's all.

Chau: Angrily I was in liaison with intellectual Americans and high officials. Since you talk that way I refuse to speak, and I refuse the defense of these two citizens designated by the prosecutor, because I believe this is collusion.

Judge: No, let me ask you some more questions.

Spectators stir.

Prosecutor: Indistinct, something pejorative about Diem and about Chau's being a protégé of Diem

Chau: I said I would say no more, but as the prosecutor meant the late President Diem, I have to speak again. You can criticize Diem's policy, but not his integrity, because President Diem's family and my family have known each other for a long time. Now I refuse to talk again.

Prosecutor: I just asked a question, that's all. As Mr. Chau is a Deputy, you should know the Constitution. He holds a copy aloft. And you know that when Hien was arrested in July 1969....

Rest indistinct. In contrast to Chau's outbursts here, the prosecutor and judge are speaking very quietly throughout.

Judge: To Chau Do you want to answer that question?

Chau: Suddenly quiet Because of that Constitution I participated in the election. Now I am ready to take any sentence that your court has already reserved for me. Now you can deliberate and decide.

Judge: No, we can never prepare a sentence in advance.

Laughter in the courtroom

Chau: I said so. It is up to your honor to decide.

Judge: No, I would like to clarify this point. I don't want to create the misunderstanding that we prepared a sentence in advance.

Chau: I have no right to charge; I do not try to insult the court. I am frank and say what I think. Now I agree to let the court move according to emergency procedure. Please allow me to sit down and await your decision.

Laughter in the courtroom. Chau is escorted to bench and sits down.

Judge: To MPs If anyone laughs, he should be taken out. If anyone protests, arrest him to be tried immediately by this court.

Now, call in Tran Ngoc Hien.

Hien is escorted into the courtroom. He is slighter and more wiry than the chunky Chau. He has thin features, a prominent chin, and bristly hair. The light shirt he is wearing hangs outside his gray trousers; his sleeves are rolled up. He keeps his hands at his sides.

To Hien Are you any relation to Chau?

Hien: I am his brother.

Judge: Begins reading a declaration by Hien, interrupting the reading from time to time to ask Hien for confirmation

Process of Meetings with Trần Ngoc Chau¹

I The First Meeting on the Basis of Old Brotherly Relations

After studying various possible targets, the Service of Studies and Research of COSVN, the NLF's Central Office decided on a number of targets, including Trần Ngoc Chau, to try to win these targets for the NLF side or to set up relations exploiting them for information. I and Chau are blood brothers, but after almost 20 years of separation we did not know each other's situation or changes as a human being.

Guidelines of Approach

- a. To be patient in winning over, no matter how long the time needed.
- b. To win his sentiment as a brother and to make use of political means responsive to his changed situation.
- c. To be very vigilant.
- d. To be well prepared in advance of any meeting in order to be ready for the first consultation with Trần Chau Khang, who is also Chau's brother, in order to meet Chau. First, to probe about Chau's ideology and attitudes.

About the beginning of 1965 Mr. Khang went to meet the concerned target Chau to inform him that I would like to meet him to learn his attitude. Mr. Khang returned and let me know that the concerned was ready to meet me any time I wanted. At the same time the concerned sent me a calling card with this message: "Let the holder of this card come to see me." Besides that, the concerned also passed a message to me asking whether I would like to come out in the chieu hoi program defecting to the government side or not. If I would like to come out in the chieu hoi program he would introduce me to Americans so I could go to the US. At that time it was not opportune for me to meet him. That is why I tore up the calling card, because it was not advantageous for me to keep that calling card on my person. And another thing, because I was using the false identity card I could get into trouble very easily.

About September 1965 Mr. Khang went to Kien Hoa to ask the concerned to help him get all the papers ready for Chau to give Khang a job at the RD training center. I asked Mr. Khang to check again on the attitude of the

I. Hien's statement as recorded here is taken from the written document. In the trial much more is omitted from Hien's statement than was omitted from Chau's statement. Specific omissions are not indicated here; but in general what is left out is Chau's unresponsiveness to Hien's overtures to him to join with the NLF.

concerned to see whether there was any change of attitude. Mr. Khang returned and let me know that the concerned did not send any message about my wish to see him. In that case I came to the conclusion that there would be nothing wrong in my trying to see the concerned by surprise. I decided to go to Kien Hoa in November 1965 in order to search out our first meeting. At about 14:30 on that Sunday, November 1965, I went directly to the headquarters of Kien Hoa Province, and I told the guard that I would like to see the concerned. I filled in the form as follows:

Dear Brother - I just came from Central Vietnam, in accord with your advice; I came here to see you; please let me see you. Signed, Mr. Lanh, entrepreneur.

After several years separation, the two brothers were very happy to meet each other. We talked about our families here. I informed him of the situation of his brother and sister and relatives who were in North Vietnam. The concerned then introduced his wife and his children to me. At the dinner table in front of his wife, the concerned tried to show that he was a daring man, and he asked me whether I had legal papers. I thanked him and said I had everything. During that night and in the conversation generally speaking I remember I raised a number of ideas as follows:

The Front told me to come here to meet you to see whether you would like to accept the support of the Front or not. Our old friends, like Buoi and Brother Luong, as well as Brothers Chuong and Kinh and Sister Lien all wish you would. Nobody hates you at all for leaving the resistance. Even we ourselves had to overcome several dangerous obstacles to look for you.

The Front puts forward a program against the Americans for the salvation of independence, democracy, peace, and neutrality. There is nothing about Communism in it. The revolutionaries never hate those who are against Communism if they have the right nationalist spirit. The revolutionary is only against those who try to use the camouflage of anti-Communism in order to suppress the people and to accept the American trampling on national sovereignty. On the contrary, revolutionaries like us would be very stupid if we sacrificed ourselves to fight against the French yoke just to accept the domination of Russia or China.

Your interests and my interests have one common point -- that is the supreme interest of the country.

There is no theory, no ideology which can supercede that basic interest.

You yourself claim to possess the nationalist spirit, that you are patriotic. You should not use any pretext of anti-Communism to take for granted excuse the fact that the Americans have been killing our compatriots and destroying our fatherland.

All the ideas of the concerned disgusted me, but my guideline was to avoid argument.

The concerned said firmly:

My position is very clear. I am anti-Communist, but I am not against any individual Communist. I do not kill anyone except on the battlefield. The concerned complained that the guerrillas tried to murder him with plastique, though they had failed in the attempt.

At the end I said this:

The main problem is to be realistic, not to try to argue who is wrong, but to get together to save South Vietnam from its 30 years of suffering and destruction, first by the French and now by the US. Today we shouldn't try to win the other over; the course of events will be the persuasive force.

The following day the concerned had to go out early on a military operation, and he asked me whether I could stay on. I told him I would like to leave. Before we bade each other farewell, Chau put into my trouser pocket a pack of 500-piaster banknotes. (After that I counted the equivalent of 30,000 piasters.) His wife let the driver take his private car to give me a ride to My Tho. After this meeting I reported to my superior as follows:

- a. The brotherly sentiment was all right.
- b. Chau's ideological and political attitudes were unfavorable. His opposition to the Communists and the NLF was still very strong. He is trying to climb to a higher position on the nationalist side.
- c. It is best to postpone trying to win him over, to wait for an opportune time and change of situation.

d. I It is best⁷ to avoid frequent meetings,
but to keep up brotherly contacts.

I propose the Front get in touch with its local Kien Hoa chapter so that the guerrillas don't murder Chau, because there is still a real possibility of winning him in the long run.

Judge: Stops reading the declaration to address Hien

Do you confirm your statement?

Hien: I made statements about Chau from different angles a long time ago.

I received the order from my superiors to carry on activities among intellectuals. I reported my contact with Chau, and my superiors said if it was fruitful, good; if not, forget about it.

Judge: I asked you whether you confirm your declaration or not, that's all.

Hien: I confirm my declaration.

1. Statements of prisoners as they appear in final form in trial are compiled from a series of questionings made at different times under different circumstances. Circumstances may include sleeplessness or torture. Vietnamese law therefore requires confirmation of any prisoner declarations at open trial.

(Hien statement continued)

II. The Second Meeting

In May 1966 I went directly to Chau's office. This time the concerned was head of the Directorate of Revolutionary Development.

At that time the Buddhists were struggling very strongly,¹ and the movement against the Americans was rising up. The internal situation of South Vietnam was on the way to disintegration. That is why I went to see the concerned, with the intent of finding out whether the general situation had affected Chau's thinking or not.

During this second meeting I tried to win him by raising this idea:

It is certain that the Liberation Front will fight against the Americans to the end. The most compatible political path for South Vietnam right now is real neutrality. South Vietnam won't be Communist, but it won't be dependent on the US. You have many friends who have the rank of general, colonel, important personalities, and intellectuals. You should select those who have the patriotic spirit to form a group that in the future, when there is an opportune time, could work together as an alliance. That would mean you would just continue to be anti-Communist, but at the same time you would try to do something against the Americans to defend the national interest. The policy of the Front is to have widespread solidarity. The Front does not require agreement with its whole program, but it requires action against the Americans. Anyone acting against the Americans will have the support of the Front.

Chau replied, that is very difficult. Even here in South Vietnam there are those who are against the Americans. There are also those who do not like the authorities the South Vietnamese government. But this does not mean that these people would like to go along with the Communists. The concerned boasted to me that he had the praise and respect of the Americans.

¹• This was the last major anti-government demonstration by the Buddhists, in which the northernmost I Corps all but rebelled against Saigon. The revolt was quashed, with the help of American planes.

The Americans wrote a paper praising him, and he also said he knew American big shots. If I wanted to meet them, he would be glad to introduce me to them. I answered, why should I see the Americans? I wish to see patriotic nationalists only. The conversation was interrupted by an American intruder. That is why I had to say goodbye and leave.

The ideology of the concerned has not changed. On the contrary, he tried to show that he goes along strongly with the Americans. That is why I decided not to try to win him over by political action, but to be patient and wait for a more opportune time.

II. Summation: There was ideological change on the surface, but internally there was the purpose of exploitation [on the part of Chau].

There was a very long period of interruption in which I did not go to see Chau because I was told by Mr. Khang that the concerned was having a lot of consultations with the Americans.

III. Toward the end of 1967, Chau asked Mr. Khang to come to his private house at Ngo Tang Chau Street in Gia Dinh, saying that he had something he would like to discuss with me. The contents as well as the ideas that the two brothers [Chau and Hien] were exchanging during the third meeting were as follows:

The concerned let me know he had gone to Hue. [He said that] several people in Hue already knew that I was in Saigon and that as my activity was no longer secret, it was possible that I might be arrested. As it was possible that security people might know about me, he advised me to return to the jungle or a secret base, that I should not try to set up liaison with all kinds of people as I would be arrested and thus involve those I was in liaison with. I answered, don't worry about that. Once in a while I will just break in [to Saigon] very fast and then jump out again.

After that he also let me know that he would run for the Lower House as the representative of

Kien Hoa. His reasoning was that the armed forces had already lost the initiative /in society/. He would go into politics because politics would have a longer-range future for him to advance by another way. Chau then added:

Do you have any way to give me support? I do not need the votes, because I know a lot of people who have more influence in Kien Hoa than I do. I do not have any competition that comes up to my level. But I would like you to tell "the other side" not to spoil election day in order to make that day lose its "gaiety" -- for instance, to forbid the people to go to the polls, to terrorize them, to shell them, etc.

I asked him, as you are a candidate, what is your new policy? He replied, since the beginning until now I have been anti-Communist, but I am not blind. Anything which serves the people and peace I will do for them.

I Hien considered Chau as a secondary target, because winning him required much patience. As a source of strategic intelligence, however, I wanted to guide the concerned in directions favorable to my mission -- but the Lower House was going to be completely public, corrupt, and a puppet. It would be of no value at all, and nobody would listen to what it said either. I posed indirectly to the concerned the idea that he should stay on in the armed forces or go to the province to become province chief or work at some ministry where he would have real authority. If he became Senator sic from this part of South Vietnam, how could he talk and argue with Mr. Nguyen Ngoc Loan Director-General of police and military security for South Vietnam at the time⁷ or any other general who had a pistol?

But when I realized that Chau was decided to go into politics, and that I could not succeed in stopping him but would only fail to win his sympathy, I said the Front had the policy of stirring up the people to fight against and boycott the election. As an individual, I would be ready to support you, I said to Chau, and I will report your proposal to my superiors as a trial balloon. If the superiors agree not to interfere with the election, the order to the local authorities in Kien Hoa would be very fast.

My report to my superior Nam Toan after meeting Chau went as follows:

"I wonder why Chau looked for me to tell me there were indications that my activities were known by friends and relatives and to advise me to go to a secret base? Brother¹ Toan, do you have any ideas on this? Please help me so I can be ready to face this.

"Chau also let me know that he would be the candidate for the Lower House from Kien Hoa and proposed to me to tell the Front to give him support by limiting the sabotage against the election here.

"Because I do not yet control Chau, this is a good opportunity to increase his sympathy for me; it creates a good opportunity for me to pursue winning Chau over.

"Brother Toan, have an exchange of opinion with the Front to see whether the question of supporting Chau would contradict the general policy or not. If possible, propose that during the election days we continue to fight strongly in other areas while reducing military activity against the provincial capital and district towns of Kien Hoa Province."

About a month later Brother Toan sent me a letter:

"Chau just used the pretext of telling Sy Hien's alias that your activities were revealed and you should withdraw to a secret base because he wants to jump into political activity, and the presence of Sy could be very difficult for him; it would hamper his freedom of activity.

"However, you should be very vigilant when going to see him anyway. Perhaps the CIA has been informed; it might set up a trap for you."

However, Brother Toan did not mention anything about my idea and my proposal not to interfere with the Kien Hoa election at all. Even up to today the superior did not say anything about that.

During the election I did follow in the papers the election developments in Kien Hoa. I noticed it was relatively calm. Besides that, I heard from Mr. Khang, who let me know that during the electoral campaign Chau used the Suzuki motorcycle as a means of transportation for campaigning in Kien Hoa.

1. Here Hien uses the familiar term of address "anh," meaning "elder brother."

In Kien Hoa there were only three candidates -- Chau, one medic, and one teacher. Chau boasted he did not have an opponent up to his level. As a result Chau got 30,000 votes from 80,000 voters, out of a population of 500,000 people in Kien Hoa. For many the electoral victory of Chau was guaranteed a long time ago, and there was nothing surprising or mysterious about it.¹

III. *[sic]* After the Tet offensive *[February 1968]* there was some indication there was a change of mind *[on the part of Chau]*.

After the first phase of the Tet offensive and after the second phase of development of the general situation and based on the above mentioned general guidelines about how to win Chau over, I worked out detailed guidelines as follows:

1. To be patient to follow the principle of winning him over a long period; to coordinate the three phases of approach, brotherly sentiment, the force of events, political and ideological action, to coordinate all these to aim at these main targets:
 - a. To advise, to criticize, to raise ideas in order to limit the damage of any political tricks that Chau might try to play in the Assembly.
 - b. To stimulate slowly *[Chau's]* nationalist thinking against the Americans and at the same time to make the concerned understand the political program of the Front.
 - c. To win him over by showing indirectly the political generosity *[of the Front]*.
2. To exploit any information as reflected *[by Chau]*.
3. Chau could be guided by the CIA in political activity. That is why *[I]* should be very vigilant, very cautious in taking all measures, and launch an offensive against him only with a lot of reserve.

1. Hien erred factually here. There were 19 candidates for two seats. Chau received 38,636 votes for 41.2% of the total; his runner-up received 12.6%.

From the middle of 1968 on:

- a. This method of winning him over as mentioned above.
- b. The force of events.
- c. Chau's real personal nature. He is a man of integrity with inclinations of an opportunist.
- d. The control of the American CIA over politics in South Vietnam goes along with the tendencies of American policy.

Slowly, step by step, Chau gives a number of indications that his thinking has changed through each meeting.

Judge: To Hien Your third meeting was in late 1967.

TV lights are on at this point, and a huge profile shadow of a man with glasses, a spectator, is cast against the front wall.

Hien: I do not remember well what I declared. I remember I advised Chau to quit the army and to engage in politics, because I believe that in the future the war in Vietnam will be settled by a political solution. Chau agreed with me about future settlement, though he didn't tell me exactly what he was going to do.

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- 1. This comment conflicts with Hien's written testimony, for in the written document Hien says he thought civilian politicians had no power in South Vietnam and Chau should stay on as province chief and as an active military officer.

(Hien statement resumed)

IV. The meeting of June 1968.

There were two purposes:

- a. To probe to see whether Chau could join the alliance of Trinh Dinh Thao.
- b. To try to see after two waves of the general offensive [February and May] and [Chau's] trip abroad whether the thinking of the concerned has changed.

The concerned raised his voice and tried to insult Mr. Trinh Dinh Thao. That is why I dropped the idea of probing him.

During this meeting, on the surface the concerned continued to be firm in his [anti-Communist] position, but he was disquieted in his way of analyzing the situation. There were some changes. For instance, from the position of having confidence that the Americans would win over the Communists to the position of recognizing that even if the Americans won't be defeated, they cannot win victory because of the wrong policy. The concerned said, you can fight anywhere you want. Why do you attack the cities like that and kill the people? I said, half jokingly, half seriously:

The countryside was already liberated. If we didn't come here to fight, where should we fight? We did not shoot the people. The homes that were damaged and the people who were injured were hit by American planes. You are a Deputy. Why don't you protest against the Americans who bomb and kill our compatriots?

He [Chau] has taken the first step of wanting to end the war. The concerned let me know that public opinion in almost all the countries that he just passed through during his trip (Japan, the US, Great Britain, Italy, France) wants to end the war and to have peace in Vietnam soon. His book entitled "From War to Peace" and his articles in the paper demanding the end of the war reflected this new thinking.

1. This was the new Alliance for National Democratic and Peace Forces set up to attract South Vietnamese intellectuals. It was to be covertly pro-NLF but not have the stigma of overt ties with the NLF. Mr. Thao, a Saigon lawyer, left Saigon for the jungle sometime before April 1968, when the alliance was announced.

Judge: To Hien Do you confirm your fourth meeting, about Chau's trip to the US?

Hien: I made many declarations. I said I found Chau not cooperative and trying to play tricks.

(Hien statement resumed)

V. The meeting at the beginning of October 1968.

After going to ideological reorientation at the Cambodian border with Tu Hiep and Muoi Tung [code names], I went to see Chau with two purposes:

- a. To know the real nature of the difference in policy between Humphrey and Nixon.
- b. To advise Chau to limit his erratic political activities.

The analysis of the concerned about Humphrey and Nixon was similar to analyses in the newspapers. However, I had to report to the superior. The concerned did try to probe which one the Front would like to see win [in the Presidential election in the US]. I answered, Nixon or Humphrey -- by nature they are the same. They have to put the interests of the US above everything else. We are Vietnamese. We should put the interests of the Vietnamese people above everything else. The Front is not afraid of either Nixon or Humphrey. If the Americans would like to prolong the war, the Front will fight to the end.

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- 1. The implication appears to be that Hien wanted Chau to make fewer political outbursts that ran contrary to government policy. What Hien wanted was not open opposition, but clandestine anti-government activity.

After that conversation on the situation, and according to the advice of Tu Hiep, I used brotherly sentiment to advise Chau to limit his trick of making all kinds of statements in the Assembly, and to be less erratic in politics, because by doing so he may be considered as a pawn of the American CIA. I used as an example his book entitled "From War to Peace" and a number of statements by him demanding peace and an end to the war.

That would help promote peace only in the American way. I emphasized to him that not only were we against this kind of reasoning, but many people in the Assembly like Nguyen Huu Chung, a Catholic colleague of the concerned, raised the criticism that the kind of peace proposed by the concerned would only serve the foreign power.

Re Thao I gently reminded Chau about joining the alliance, but I did not want to argue at length.

Judge: To Hien? The fifth meeting?

Hien: Yes. confirming the statement.

VI. A few days after Johnson announced the halt of bombing of North Vietnam, toward the end of November 1968, I went to meet Chau with the purpose of finding out:

a. The contradiction and the disintegration between the Americans and the Saigon authorities.

b. The point of view on a peace solution of each personality and each group in Saigon and in the US.

Meeting Chau, I asked:

Was the reaction of the Assembly to Mr. Thieu regarding the unilateral decision by the US to halt the bombing of North Vietnam real or not? I heard the rumor that this was a show mounted by Bunker as a scenario.

Chau laughed: That is a real reaction. You people, don't try to say that here the Americans can do anything they want. It is not true that any decision of the Americans here is automatically carried out.

1. After President Thieu, in a joint legislative session, announced his refusal to send a delegation to the Paris talks many Senators and Deputies marched from the Senate to the Presidential palace in a manifestation of support for Thieu's resistance to the American pressure on him to enter negotiations for a peace settlement.

I replied, It is said: Even for me as an outsider, I was very annoyed at the American pressures. The Americans, we cannot get along with them. They try to walk on our heads crudely. This is a good opportunity to weaken a number of Vietnamese to see that they should look for another way out, in order not to be too dependent on the Americans.

Chau asked me: Do you want to try to see whether North Vietnam would agree to receive a delegation of Deputies of South Vietnam to go to Hanoi to meet the leaders of North Vietnam in order to understand each other, to find some possible way to solve the war in South Vietnam?

I asked him back: Little Brother, do you really want to find a compromise between Vietnamese and Vietnamese or not? Is that your personal opinion or the opinion of some other force? Chau said, This is not the right time to say explicitly. But generally speaking, Foreign Minister Tranh Chanh Thanh has the same idea.

I tried to take that opportunity to suggest unobtrusively that this is not a realistic proposal. Why should you go to North Vietnam while the Liberation Front is your direct opponent, and it is the legitimate representative of the people which has decisive authority? North Vietnam has not recognized the South Vietnamese regime. How can it receive a delegation of Deputies from here? This kind of thing can be helpful to the Americans, because the Americans will take advantage of it to soothe public opinion. The only correct solution is to sincerely find a solution directly with the Liberation Front of South Vietnam. However, I will make a report to the superior, and I will give you the answer, Little Brother.

I did make a report to the superior about Chau's proposal, and I requested Brother Toan:

- a. To study Chau's proposal to see if this proposal camouflaged some scheme in it.
- b. To give me an idea how to answer Chau delicately to preserve the general line and at the same time not to be too tough.

After that Tu Hiep sent me the instruction that I should follow the announced policy on Radio Hanoi and Radio Liberation in answer.

Judge:

At the sixth meeting, after the bombing halt, you inspired Chau to propose a meeting of parliamentary delegations with the NLF and the North Vietnamese?

Hien:

I confirm we talked about that. But I had no power. I just had to report on my side it was too difficult to arrange. I doubted North Vietnam would agree.

VII. The meeting after Nixon was elected, toward the end of December 1968.

Chau felt very elated after Nixon was elected. He said that during this transitional period even though the position of Mr. Thieu is a bit delicate, I still have confidence that each coming day will be brighter.

Following the guidance of the superior, I told Chau that right now the sending of a delegation of Deputies from South Vietnam to North Vietnam is not propitious. Chau became excited and said, this means that you misters [derogatory] think you are sure of winning. You want only to "liberate" privately with the Americans here. You misters, don't try to corner us into the position of making a choice of going with the other side [the NLF] or siding with the Americans completely. We are the people who do not want to go along with the Front or with the former [Tran Van] Huu [a Prime Minister under the Emperor Bao Dai. who sided with the French against the Viet Minh, then after Dien Bien Phu fled to France]. We are simply the people in the middle.

I waited until Chau became less excited. I then brought up a number of other ideas.

The policy and the position of North Vietnam and the National Liberation Front are always compatible. The Front's policy is that the problem of South Vietnam should be decided by the Vietnamese among themselves without interference by people from foreign countries.

If you, Little Brother, or any group that sincerely wants to find a way to end the 30-year-old war and suffering of the people, you should find a solution by dealing directly with the Liberation Front of South Vietnam. Sooner or later we have to reach that point.

Today the US has many kinds of problems. This is the best opportunity to get rid of the control of the Americans, and the only way [to do that] is to find a compromise between Vietnamese and Vietnamese..

Judge: To Hien Do you confirm that at the seventh meeting with Chau, Chau gave 10,000 piasters to your children?

Hien: Yes.

I. Here Chau is charging the Communists with trying to settle with the Americans while ignoring the South Vietnamese.

(Hien statement resumed)

VIII. This meeting happened after Tet 1969, toward the end of February, on the request of Chau through Khang.

When I met the concerned he immediately said: There is a group of Deputies representing a number of religions who would like to form a delegation to go to Paris or anywhere to meet separately with North Vietnamese or the Front, with the purpose of understanding each other and learning the possible ways of solving the war. The purpose of this group is to create for themselves a political stature in order to present their view to various groups. So right now there is a group that has the capacity to create good conditions for understanding and finding a solution with the other side. The format of the meeting might be to see the North Vietnamese first, then to see the Front later, or else simultaneously.

I asked what is the nature of the solution? He answered, to solve the problem with the Front does not require amendment of the Constitution, because the Constitution is against Communism, not the Front, and the Front has never admitted that it is Communist.¹ Later on, the Front could be considered as a political party. The Constitution could be amended so the minority side [the Front] could fill in a number of Deputies [in the National Assembly]. President Thieu has the same idea. Sooner or later we have to solve the problem with the Front, but right now to say so or to make such a declaration would mean to be beaten to death.² He proposed that I should try to find out whether the Front and North Vietnam would agree to accept this kind of meeting or not during the period of April or May 1969, when he would go to Paris.

I asked him to find out more about the composition of this group [of Deputies].

[Two lines, probably names, deleted here.]

I took that opportunity to raise gently the idea: Is this your real and sincere personal opinion, Little Brother, or a political trick or a scheme of the CIA?

Does this group [of Deputies] have influence and prestige, or not? If this group does not, then after the meeting, when the group returned, they would be put in jail and nothing realized after that. What is the real intention of Mr. Thieu?

1. This was Saigon's reasoning in finally joining the Paris talks.

2. Chau appears to have been implying that Thieu would have liked to make such a proposal, but that it was politically impossible for him to do so at the time. Thieu was saying this in diplomatic circles then, and his subsequent public offers did approximate the approach outlined here by Chau.

Your group, Little Brother, would like to have real effectiveness. It should struggle to expand itself to include the main religious forces like Southern Catholics, several words deleted and the An Quang Buddhists in order to get more prestigious personalities inside as well as outside the Assembly. If the group has only the kind of people whom everyone is tired of when they talk and wants to run away from, that would be useless. This group should have a political program compatible with independence, democracy, peace, and neutrality; and then it would have the hope of solving the problem. To go into politics means to know the real balance of forces. You, Little Brother, on what criteria do you consider the Front as a minority?

At the end I promised: This was not concrete or specific, but I will try to report to higher authority, and I will answer you very soon.

After meeting Chau I sent a report to higher authority giving the position of Chau on how to solve the problem with the Front within the framework of the Constitution. In another letter to Tu Hiep I jotted down:

I do not know whether in April or May there will be a new change in Paris that makes Chau intend to go there. He expressed the wish to meet us.

After that I met Ba Can Code name and mentioned Chau's proposal to him. And I also let him know that we should try carefully to find out more in order to keep the higher authority better informed. I planned at the beginning of April 1969 to meet Chau with the purpose:

- a. To learn the real strength and the real character of the policy position of Chau's group.
- b. If conditions were favorable, I would begin getting in touch with a number of personalities in order to investigate further the conditions of collecting information on the situation favorable for strategic intelligence i.e., to widen the network of contacts to improve his understanding of the political situation.

I did not have the chance to meet Chau. I was arrested April 6, 1969.

Judge: [To Hien] Do you confirm the eighth meeting?

Hien: I declared Chau is a tricky politician, but I did not report that to my superiors because I was following what Chau was doing because I did not know exactly what Chau had in the back of his mind.

Prosecutor: Did you receive the order from your superiors to be in touch with Chau?

Hien: No, I initiated that idea, and then I reported my contact with Chau to my superior. He agreed to my contact with Chau.

Prosecutor: After eight meetings with Chau what did you think of Chau?

Hien: We are brothers, but he was anti-NLF, and I was a member of the NLF. So his position and my position were very clear.

Prosecutor: When you found out that Chau was still anti-NLF, why did you continue to meet Chau? After he became a deputy did you meet him again?

Hien: I did meet Chau in 1968 and early 1969 as a brother, but not in the capacity of a deputy.

Prosecutor: As a Communist, were you allowed to come to see Chau so often just as your brother?

Hien: As I was an intelligence officer, I had complete freedom to meet anyone I wanted to. My purpose was to obtain information. Those who refused to cooperate I had to exploit.

Cu: Mr. Hien, do you remember the exact date of the eighth meeting with Chau?

Hien: I remember only early 1969, but not the day and month.

Cu: [shaking his finger at Hien] Did you know your elder brother Khang worked for the RD program?

Hien: No, I did not know Khang worked for the RD program. When I met him and I learned he worked at the RD center, I intended to exploit him.

[Chau's elder brother Tran Chau Khang now takes the stand. He is like an aged and weaker version of Chau in appearance and manner and looks his part as the ineffectual brother who went bankrupt and had to be helped along. He is chunky in build -- like Chau -- and has gray hair and a flabby chin. He wears a white shirt with elbow-length sleeves and gray trousers.]

Judge: Did you meet Hien?

Khang: Yes, Chau told me he met Hien; and he told me that he intended to persuade Hien to return to the nationalist side and then he would send Hien to the US to study.

Prosecutor: Did you receive a calling card of Chau's to pass on to Hien so in case Hien was arrested Hien could show this calling card as a guarantee?

Khang: I don't remember.

Prosecutor: Did you carry out any mission for Chau?

Khang: No, Chau just told me that if Hien came to look for him, please tell him [Hien] to come out [return to the nationalist side legally], and then Chau would send Hien to the US for study.

Cu: Mr. Khang, did you pass on RD documents to Hien before 1968?

Khang: No.

Prosecutor: After reading the documents on Deputy Chau we have decided to prosecute Chau on the charge of liaison with the enemy damaging to national defense under article 10 of law 11/62. When we decided to prosecute Deputy Chau we did not arrest him immediately, out of respect for Article 3 of the Constitution, on the independence of legislative, executive, and judicial branches. We did send judicial police and summonses to ask Deputy Chau to report to us three times so we could get more information. Mr. Chau did not come at all. That is why we had to postpone the trial for five days -- until February 25, 1970 -- to try Chau in absentia.

According to regular procedure, under Article 102, Chau could have a defense, but his lawyer was not present. According to this article the judge could pass judgment with the maximum punishment applicable until the sentenced person is arrested or he voluntarily appears for retrial. Instead of coming to report, Mr. Chau did not appear. So, on February 25, 1970 we did ask the court to allow us to arrest Mr. Chau. When Mr. Chau was arrested, we came to this new trial, which has lasted from March 2 through today.

(Prosecutor con.) According to the procedure of this special court, there is no appeal, and the sentence is executed immediately. We always accept the control of the Supreme Court, but we refused to agree to pass on the request of the lawyer to protest to the Supreme Court. As the lawyers withdrew, we had to apply article 10 of law 11/62 to designate a citizen holding a law degree to carry on the defense.

Now I would like to go into the content of the case:

1. The crime of Deputy Chau.

2. Why the case is one of flagrante delicto.

Mr. Chau and Hien admitted they were in contact. As chief of province, Mr. Chau allowed Hien to use a government car to leave Kien Hoa after meeting Chau, and gave him 30,000 piasters. As chief of province, Mr. Chau should maintain security in his province.

Mr. Chau did not report when we sent three summonses to answer the prosecution. Instead, he held a press conference saying he met Hien.

He met Hien three months before the Tet offensive of 1968. Why did Mr. Chau not report the imminent offensive to the Vietnamese, but did report it to the Americans? As a high-ranking officer, why did he not work for the Vietnamese government, but did work for foreigners? If that is not the case, why did he spend three hours briefing the foreigners? Because, Mr. Chau said, he could not find any Vietnamese he could brief on his prediction. Because he had no confidence in the Vietnamese authorities. That's why he went to the Americans. And after three hours of briefing, the Americans did not apply his advice either, and he let the whole event happen exactly as he predicted.

Mr. Chau was inspired by Hien to suggest sending a delegation of the South Vietnamese Assembly to meet a delegation of the Assembly of the North. That way would lead toward the overthrowing of this regime. If we look back on the evolution of the activities of Hien when he came back to the South until the day Hien was arrested, we can realize this plan.

Hien was not a simple cadre. He was an important cadre. Even though in front of the court Hien said he and Chau had different positions, they had eight meetings and planned to continue to meet! Hien just attempted to help defend Chau in saying that.

(Prosecutor con.) The crime of Mr. Chau was not only being in liaison with the enemy at least eight times, but also giving information to a person who presented a danger to national defense. Hien's activities were dangerous to national defense.

2. Flagrante delicto.

This book /held in the prosecutor's hand/ was printed in France in 1928. It's an old book, so it's not fancified or invented. I'm sure it's correctly printed. I would like to quote from the book the four cases of flagrante delicto.

/He reads from the Dictionnaire formulaire des Parquets de la Police Judiciaire, Article 4:/

"Definition. The offense is considered flagrant:

"1. when it is being committed now.

"2. when it has just been committed.

"3. when the one who shared in it is followed by public clamor.

"4. when this individual is found holding effects, arms, instruments, or papers leading to the presumption that he is the author or accomplice, provided that this occurs within a time neighboring the offense."

The applicable one is the fourth. Hien's was a case of flagrante delicto, as he was caught with documents. Chau is related to the case of Hien. Consequently, Mr. Chau's is a case of flagrante delicto. If Hien had not been arrested in flagrante delicto, how could Chau's activities have been revealed? So Chau is being prosecuted on a case of flagrante delicto. Mr. Chau was the object of police surveillance, and we were tailing him to learn the activities of the enemy, which had a big plan to overthrow the regime, the Republic of Vietnam.

As for the argument of lawyer Dai, who gave the example of gambling this past Monday: This example cannot be compared with this case. Gambling is among individuals. This case of Hien's activities is a big case, involving a big plan with a long period of activities, not a short period like playing cards. We have to follow the activities of the enemy, which needs some 20 years or longer to carry out this plan.

(Prosecutor con.) That's the sum of the view and standpoint of the prosecutor. Now the defender will present his view, and the judge will decide on the issue of flagrante delicto. This crime is important, because if the enemy can carry out his plan, the South Vietnamese regime will be overthrown. That's why we ask your honors to weigh things carefully before deciding, because this case is a very important case. We ask your honors to consider this case carefully, particularly the responsibility of this court to reestablish order and security. We ask your honors to hand down a serious verdict.

Cu: We are citizens. In the interest of justice we came here to express ourselves as citizens who want to defend justice. Your honors, the sentence of February 25, 1970 was given at a time when Deputy Chau was a deputy. On what basis was Deputy Chau prosecuted?

As a result of the trial of February 25, 1970 the order was given to arrest Tran Ngoc Chau. But on February 7, 1970 the order was given to arrest Mr. Chau, but it was rescinded by the other decision of the III Corps Tactical Zone Commander. Now we ask on what basis Tran Ngoc Chau was arrested.

As Deputy Chau was arrested and put on trial, Vu Van Huyen and Nguyen Phuoc Dai asked the court to declare the case unconstitutional. All the arguments of these lawyers and their request to the court to send an appeal to the Supreme Court were stated already in front of this court.

Your honors, the prosecution and the viewpoint of the prosecution were not well founded. The prosecutor isolated law 11/62. We have not committed a crime. Mr. Chau presented very clearly all his activities. He has proved clearly his position as a nationalist. Not only did Hien and Khang confirm this, but in his report to his superiors Hien also said that not only was Chau not cooperative, but Chau also had ambition for higher office on the nationalist side.

We oppose the prosecutor's position [on Chau as] a flagrante delicto case as a person caught red-handed or as continuity from a person caught red-handed. The last meeting between Chau and Hien was in April 1969. After that, on April 7, 1969 Hien was arrested.

On February 19, 1970 Chau was prosecuted. We would like to know what constitutes the continuity of the flagrante delicto case. On February 4, 1970 the III Corps authorities sent a letter to the police to follow the activity of Deputy Chau. So there was discontinuity from April 7, 1969 until February 4, 1970. In the time between Hien's arrest and Chau's prosecution they never said anything about Chau. So now you can't use that to charge Chau as committing a crime in a case of flagrante delicto. And if it's not

(Cu con.) flagrante delicto, then you cannot bring Chau before this court. We ask your honors to declare that this court has no authority over this case.

We live in a society we are defending with our resources, with our own blood. We have respect for the country, family, society. We are not Communists. We cannot force Deputy Chau not to recognize his brother Hien and give some money to his poor brother.

You cannot blame him and order Mr. Chau, as a nationalist fighter, not to see his brother, a member of his family, which is the basis of society. At the bottom of your heart you know that we nationalists have to think about our ancestors who died. Now two brothers separated for over 20 years, how can we stop them from embracing each other unless Mr. Chau is a Communist who received the order not to do so?

Prosecutor: On February 25, 1970 the sentence was passed on Mr. Chau on a case of flagrante delicto. We had to arrest him according to the procedures of an emergency case. And this court does not allow appeal. The purpose of this court is to bring back order and security as fast as possible, and this case touches national security. And as I said, the case of Hien was a case of flagrante delicto. We continued to follow the activities of those who were involved, and consequently those arrested because of this case were considered as flagrante delicto cases.

This court continues to exist because the lawmakers think it is necessary. If not, they would have dissolved this court within the period of two years allowed by the Constitution after the Constitution was promulgated.

We did not arrest Mr. Chau immediately after the arrest of Hien because we would like to follow the activities of the whole organization. This did not mean there was disruption of continuity. We didn't say anything about Chau, but that doesn't mean we didn't follow him.

The Communists know our strong family feeling. They try to exploit it. But we should put the interest of the country above the interest of individuals or families.

Cu: Do your documents indicate that the 102 deputies who signed the resolution which agreed to allow the executive to prosecute Mr. Chau, specifically at the conclusion asked the executive not to arrest Mr. Chau?

(Cu con.) Concerning the case of flagrante delicto, there are many books to define such cases, not only one book. It is clearly a case of flagrante delicto when there is public clamor and the accused is arrested. Or 48 hours after [a crime] can be considered immediately.

Chau was a victim of his brother Hien, who was a Communist who tried to exploit Chau, a nationalist who was full of sentiment. We ask your honor not to punish a nationalist who was a victim of Communist exploitation.

The same case arose with Captain Dr. Pham Doan De,¹ who was in liaison with Hien, the same as Chau. Capt. De was acquitted by this same court. And Dr. De and Hien met to discuss subjects similar to those Chau discussed. At this court Dr. De said he did not have the guts to denounce Hien, a friend of his brother. In Chau's case, how could your honor expect Chau to denounce his own brother?

We request your honor, because of national interest, to return Mr. Chau to his position as deputy.

Chau: Your honor, I would like to summarize that when I was in the Lower House they [the police] took me away roughly. And here my talented lawyers and myself, we argued that I was innocent. I disagreed with the prosecutor, who invented the charges to prosecute me. I have served the country 23 years, an officer in the field who received medals on the battlefield. These last few days I came here wearing black pajamas. You can say I am Communist, or you can say I am an agent of the CIA, because RD cadres wear black pajamas. I wear black pajamas as a symbol of a good Vietnamese citizen.

When I die, I ask the favor of being buried in the military cemetery. And my tapes and my memoirs will be published at an appropriate time.

[Court recesses for deliberation, then returns with a verdict of guilty. Chau is convicted of being in "liaison with a person who was carrying out activities detrimental to national defense." He is sentenced to 10 years of hard labor in prison and confiscation of his property, but is not to be exiled from Saigon on his release from prison.]

1. See page 54.

It is 2:30 p.m.

Chau is escorted out of the courtroom by MPs, and there is some confusion about what to do with him before he is placed in a jeep and driven out the front entrance to the compound. The spectators pour out of the chamber in Chau's wake, and there is time for Chau to say, in English, to surrounding reporters, "I am still useful for peace settlement," and to wave his familiar "V" sign.

In the emptied courtroom only four people remain: the prosecutor, one journalist, and two workmen who are starting to put the benches in order. The prosecutor stands at his desk looking around mildly, rather like a host whose guests have all suddenly left his party. The reporter approaches him and inquires if he speaks French. Without waiting for questions the prosecutor replies, "It is necessary to apply the law according to special military court procedures."

That afternoon, the US Armed Forces radio station in Saigon, which has been hotly denying recent charges of censorship in its newscasts, leads the news with: "Agnew speaks out against violence in South Carolina." It follows with items about oil slicks, riots in Puerto Rico and at the University of Illinois, and closure by the Defense Department of some American bases in a new economy drive. Tran Ngoc Chau is not mentioned.

Meanwhile, at the National Assembly, the two fasting Deputies pick up their belongings, climb into cars, and drive away. The US Military Command lists the weekly battlefield death toll as 333 South Vietnamese troops and 113 Americans -- the first week since November that GI deaths have topped 100. The official war total is now 40,758 Americans killed in action, 100,989 South Vietnamese killed in action, 608,823 North Vietnamese and Viet Cong killed in action, and 268,296 Americans wounded, about half of whom required hospitalization.

In a rare effort to explain the high weekly figure of US deaths, the US Command issues a prepared statement:

"The US killed in action figure is the highest since 22 November 1969 when 130 killed in action were reported. However, there is no evidence of an increase in the level of combat for the week ending 28 February 1970 (last week's reporting period)."

"The number of wounded (465) is the lowest in over two years and the total KIA and WIA is the lowest since the week ending 3 January 1970, a week which included an enemy cease-fire period. During the same reporting period last year (23 February to 1 March), US casualties were 453 KIA and 2,593 wounded."

Military spokesmen add that seven American fighter bombers attacked enemy positions inside Cambodia after 32 rounds of 82 mm mortars were fired from there at the South Vietnamese district town of Ha Tien two miles from the border. The spokesmen explain that the attacks by bombers are an inherent right of self-defense.

On the next day the Senate will pass President Thieu's comprehensive land-reform bill. The following Monday the US Marine command in northernmost I Corps will be turned over to the army -- a reflection of marine withdrawals. Over the years since 1965 the marines have accounted for a disproportionately high one-third of US casualties in Vietnam. Secret reports are circulating in Washington as to why for the first time in its proud history the Marine Corps did not win in this engagement.

EPILOGUE

On May 5 the Supreme Court, having prodded the reluctant military field court into transmitting the documents on the Chau trial, renders judgment on the Constitutional issues of this case. It has already rendered the intermediate judgment, in response to the petition to the Supreme Court by one-third of the Lower House members, that the original Lower House petition process did not constitute approval to bring Deputy Chau to trial as required by Art. 37, par. 2 of the Constitution.

Now the Supreme Court also rules out the last-minute substitute basis for prosecution: Chau's case, it declares, is not one of *flagrante delicto*. This means, as the court explicitly declares, that the whole indictment and trial of Chau have been unconstitutional.

Furthermore, the Supreme Court in effect rules the entire military field court unconstitutional in having judges who are still in the military hierarchy rather than professional jurists, in not according minimal defense safeguards, and in not holding itself accountable to the Supreme Court in verdicts or procedures.¹

What the court does not rule unequivocally on is nullification of Chau's final sentence. This sentence, the Supreme Court says, must be appealed under separate and different procedures.

1. Actually, the Supreme Court has already ruled the military field courts unconstitutional a few days earlier in a decision involving students who were tortured in routine police questioning prior to trial. The court decision in Chau's case thus merely confirms -- at least on the surface -- the earlier decision. The ruling in the case of the students was the Supreme Court's maiden venture in declaring significant acts by the executive unconstitutional.

The background of this decision is instructive. One source

The substantive portion of the Supreme Court decision reads as follows:

IN CONTENT

In consideration of the letter of appeal dated 2/3/1970 against the decision of the III Corps Tactical Zone Mobile Military Field Court which refused to transmit his letter of appeal, Deputy Tran Ngoc Chau requested the Supreme Court

To declare unconstitutional the Decree Law dated 21/5/1962 establishing the Military Field Court.

close to the court explains that the Supreme Court was prepared to rule the military field courts unconstitutional on the basis of the Chau appeal before the case of the students ever came up. The court reversed the timing of its consideration of the two cases, however, so that the primary ruling on the unconstitutionality of the military field courts would not fall on the politically sensitive Chau case.

With the students, the court could plead (if called to political account) overwhelming public pressure. According to unverifiable reports, some court officials secretly encouraged the Saigon students to appear en masse at the Supreme Court session in which the case of the tortured students was being considered. Whatever the truth of these reports, several hundred students did show up at the Supreme Court on the day of the ruling, were first repelled with teargas, then allowed into the chamber, where they sat in orderly fashion on the floor, filling all available space.

Ever since the arrest of a major student leader some two months earlier on charges of liaison with the NLF, the students had been holding sporadic demonstrations at various faculties. Currently, they were occupying the empty Cambodian Embassy to protest against the massacres of Vietnamese in Cambodia and the Saigon government's lack of protest against the massacres. The Cambodian issue had for the first time brought perceptible public sympathy for the demonstrating students.

The specific process by which the Supreme Court reached its decision to rule military field courts unconstitutional appears to have revolved around an obscure clause in the basic organization law of the Supreme Court that allows minority reports to be registered on Supreme Court decisions. Strictly, this provision was meant to apply only to cases of interpretation of the Constitution as such. And in practice a minority report had been filed only once before, in a minor case. This time, however, one of the nine judges of the Supreme Court signaled his interest in filing a minority opinion if the military field courts were upheld. The effect of such a minority report, signed by its adherents, would have been to identify the majority who had gone along with the military field courts.

Anonymity, however, is a traditional Vietnamese virtue in law as in much of politics. Provision for a minority opinion was a

To declare unconstitutional the letter of indictment of the Minister of Defense ordering the author [Chau] to be tried; at the same time to declare of none effect his indictment as well as the sentence punishing the author to 10 years of hard labor.

To declare unconstitutional the order of imprisonment [of Chau] signed by the Minister of Defense on 19/2/1970.

On the Decree Law 11/62 dated 21/5/1962

In consideration of Articles 3, 76, 77, 78 of the Constitution of 1967, judicial powers are independently assigned to the Supreme Court and carried out by courts, the trial judges and public magistrates of which are professional, and the defense procedures of which are respected and under the control of the Supreme Court,

typically American principle engrafted onto the law of September 1968 organizing the Supreme Court (which is itself an un-Vietnamese and un-French, but typically American institution). Until this time, it was a sacred principle, according to one Vietnamese jurist, that the opinions of individual judges in any panel of judges not be revealed. So ingrained was this that unanimous decisions were customarily recorded as majority decisions so that no judge could be held to an opinion.

The passion for anonymity, of course, is strengthened at times of political uncertainty. The fact that the Supreme Court had never before opposed President Thieu was a political as well as a legal phenomenon. The court had, after all, had several prior opportunities to declare the mobile military field courts unconstitutional -- and had declined to do so. Thieu is "good by Vietnamese standards," one source reports, in not putting excessive pressure on decisions in individual cases. But he does exert influence on election of Supreme Court members, the source indicated, and with several of the judges being former administration officials themselves or having close relatives in the present Thieu administration, a certain harmony with the dominant Thieu politics has not been unnatural in the court.

The fact that enough members of the court had come around to making an anti-establishment ruling a real possibility was therefore an indication of some political shift. And this shift was palpable not only in the student and veteran demonstrations, but also in more fundamental popular discontent with inflation and general anticipation of a weakening in the American underwriting of Thieu as American withdrawals progressed. If Thieu were to be on the descendant in the not too distant future, then it would behoove any public official not to be too locked to Thieu -- at least not on a clearcut legal issue that yielded such scant justification for a pro-Thieu ruling.

The upshot, sources report, was that no vote was ever taken among the nine judges. (A minimum vote of seven is required to declare a decree law unconstitutional.) As the discussion progressed, there was no opposition to finding the military field courts unconstitutional in their composition and procedures.

In consideration that the actual composition and procedures of the military field court, which were determined by Decree Law 11/62 dated 21/5/1962, are not compatible with the above provisions that are demanded of courts of justice,

In consideration that since judicial powers are delegated to the Supreme Court, it is its responsibility to appoint the members of the judiciary, the appointment of a tribunal by Presidential decree and the appointment of assessors by the Minister of Defense are not compatible with the Constitution,

In consideration that in its present composition the president of the tribunal and the assessors of the military field court are not professional judges but officers and secondary officers serving in the tactical zone,

In consideration that according to the procedures of the military field court, determined by Law No. 8 dated 16/5/1954 the authorities who have powers of indictment can have cases tried immediately at the court, without preliminary investigation, even though the crime may lead to a death sentence; and that this power is contrary to Article 26 of the Military Code, which stipulates that the immediate trial without preliminary investigation conducted by two separate agencies of a criminal accused liable to a death sentence must be limited according to the laws; and that this power is contrary to the principles which respect the criminal's accused's right of defense because the period of preliminary investigation is refused in cases which could draw a death sentence,

In consideration that Law No. 8 reserves no period of time for preparation of defense of the criminal accused between his day of imprisonment and his day of trial in court, whereas Article 26 of the Military Code reserves for the criminal accused the right to be protected by a lawyer in every phase of investigation, which is against Constitutional principle, but allows, when necessary, a defender to be appointed from outside the ranks of registered lawyers or practicing lawyers,

In consideration that the sentence of the military field court allows no process of appeal or annulment and is carried out immediately after deliberation under Articles 12 and 13 (par. 1) of Decree Law 11/62, which sets the president of the tribunal and its assessors outside of legal control by the Supreme Court,

In consideration of the above elements, Articles 3, 4, 5, 9, 12 and 13 (par. 1) of Decree Law 11/62 dated 21/5/1962 establishing the military field court are incompatible with Articles 3, 76, 77, 78, and Article 7 (par. 6) of the Constitution.

On the decision of indictment of Deputy Tran Ngoc Chau

In consideration that Article 37, par. 2, of the Constitution states that throughout his period in office, except in cases of *flagrante delicto*, a Deputy can be indicted only with the approval of three fourths of the total number of Lower House Deputies,

In consideration that the indictment charged Deputy Tran Ngoc Chau with having contact with insurgents...in a period from January 1965 to 6/4/1969, and that even if he had committed such acts, these had become outdated in accordance with Article 41 of the Penal Code concerning *flagrante delicto* (*i.e.*, that Chau was not arrested in sufficient proximity to the alleged crime to constitute *flagrante delicto*, or "caught in the act"),

In consideration that the approval of three fourths of the total number of Deputies or Senators stipulated in Article 37, par. 2, of the Constitution must be the result of debate and ratification in a general assembly of the respective House (as per the interpretation of the Constitution given on 24/3/1970 by the General Assembly of the Supreme Court (*in response to the petition of one third of the Lower House*)),

In consideration that Deputy Tran Ngoc Chau has not been *legally* indicted either in a case of *flagrante delicto* or on the approval of three fourths of the total number of Deputies in session, the indictment has violated Article 37, par. 2, of the Constitution.

On the order of imprisonment

In consideration of the letter of Deputy Tran Ngoc Chau requesting the Supreme Court to declare unconstitutional and of none effect the procedures of indictment as well as the sentence of 2/3/1970 the Supreme Court accepts the letter of appeal dated 2/3/1970 of the aforesaid person against the decision of the same date of the III Corps Tactical Zone Mobile Military Field Court which refused to transmit the letter of appeal dated 2/3/1970 to the Supreme Court.

IN CONTENT

The Supreme Court Declares unconstitutional Articles 3, 4, 5, 9, 12 and 13 (par. 1) of Decree Law 11/62 dated 21/5/1962 establishing the military field court because they are incompatible with Articles 3, 76, 77, 78 and Article 7 (par. 6) of the Constitution,

Declares unconstitutional the indictment of Deputy Tran Ngoc Chau because it is based neither on a case of flagrante delicto nor on the approval of three fourths of the total number of Deputies in session, and thus has violated Article 37, par. 2, of the Constitution,

Cites the request to annul the conviction dated 2/3/1970 of the III Corps Tactical Zone Mobile Military Field Court, as well as the order of the military field court sentencing him to 10 years of hard labor and the order of imprisonment signed by the Minister of Defense dated 19/2/1970.

However, in consideration that Article 80 of Law 007/68 dated 3/9/1968 stipulates that annulment of a final sentence is the right of the Committee of Appeal of the Supreme Court, this procedure of appeal is different from the procedures of constitutional protection of Article 70 of the same law; therefore, the author must request nullification of the sentence according to the correct procedures.

In consideration of the above elements, the order of imprisonment of the Minister of Defense dated 19/2/1970 must be canceled until a court decision, and must depend on the result of the court sentence.

Following the Supreme Court decision, a reporter telephones the Supreme Court to ask the names of the 9 judges. On the first call, the receiver is abruptly hung up. On the second call, the answerer says that this information is confidential.

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As of this writing, three months after the Supreme Court decision, Deputy Tran Ngoc Chau remains in prison.

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Received in New York on August 11, 1970.

